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REPORT
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ECONOMIC DISLOCATION AND WORKER ADJUSTMENT ASSISTANCE ACT

AUGUST 7, 1987.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HAWKINS, from the Committee on Education and Labor, submitted the following

REPORT

together with

DISSENTING, SEPARATE, AND ADDITIONAL VIEWS

[To accompany H.R. 1122]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 1122) to implement the recommendations of the Secretary of Labor's Task Force on Economic Adjustment and Worker Dislocation, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

INTRODUCTION

H.R. 1122 is based in large part on the report of the Task Force on Economic Adjustment and Worker Dislocation established by Secretary of Labor William Brock in 1986. During consideration of H.R. 1616, the Labor-Management Notification and Consultation Act of 1985, in the 99th Congress, Secretary Brock established a "blue ribbon" task force to study the problem of worker dislocation. In December of 1986 the task force issued a report titled "Economic Adjustment and Worker Dislocation in a Competitive Socie-

ty". The report was signed by twenty representatives of business, labor, government and the academic community. It stated:

> In an environment of rapid economic change, employers may have to lay off massive numbers of workers, or perhaps close down entire plants. Such drastic action could be dictated by new technology, foreign and domestic competition, demographic shifts, changes in demand, mergers and acquisitions, or a combination of these forces. Whatever the cause, workers face serious problems when they are forced out of work. . . . Yet because the American economy will continue to undergo major transitions, worker dislocations are certain to be an economic fact of life in the foreseeable future. . . . Coping with the problem is a challenge both for the private sectors in the economy as well as for public officials.

In order to address the challenge of dislocated workers, the task force recommended a broad revision of the programs designed to provide assistance to dislocated workers. These recommendations form the basis of H.R. 1122, in particular the provisions contained in Title I of the bill. The bill is intended to assure more efficient and timely delivery of services to dislocated workers. It commits subsequently greater resources to worker dislocation programs, restructuring and consolidating existing programs. It seeks to implement the task force finding that the earlier workers who are about to be laid off are provided assistance, the more likely that the negative consequences of displacement will be minimized.

The task force agreed that "advance notification is an essential component of a successful adjustment program." However the members of the task force could not agree as to whether advance notice should be mandated by law. Because we believe it to be essential to a successful adjustment program, H.R. 1122 contains a provision requiring, when possible, notification of plant closings and mass layoffs, as well as consultation between effected parties once notice has been given.

For more than a decade, the Committee has studied the problems caused by plant closings and mass layoffs and has considered legislation to mitigate such problems. Much of the legislation we have examined has been comprehensive in nature: past bills sought to prevent unjustified and sudden plant closings by raising the cost of closure to employers through the elimination of tax write-offs and credits; most of the bills sought to protect employees from serious financial loss by requiring the employer or the government to provide severance pay or weekly benefits; and most sought to protect employees from loss of pension rights, loss of health and life insurance coverage, and job loss by requiring the employer to fund those benefits and offer transfer rights. Some of the bills referred to the Committee attempted to encourage employees and communities to purchase facilities slated for closing and sought to protect local governments from catastrophic tax revenue losses. All of the earlier "plant closing" bills included provisions that would have increased the opportunities of displaced workers to train for new jobs. Many of the bills the Committee considered would have created new

agencies to monitor and forecast industrial relocation and disinvestment.

These far reaching bills were never approved, but elements of them have been enacted as parts of other legislation. For example, the Employees Retirement Income Security Act protects against pension losses which formerly were a common result of plant closings. The Job Training Partnership Act created a small training, counseling, and job search program for displaced workers and required the Secretary of Labor to monitor plant closings and issue an annual report on their extent and location. Congress has approved legislation requiring that preexisting health insurance be made available to employees at their own expense after a layoff.

Like these latter measures, H.R. 1122 does not seek to address all aspects of the plant closings. Rather it is a bill that is focused on the issue of worker readjustment. While it does not attempt to solve all the problems caused by plant closings and mass layoffs, it is a comprehensive approach to dealing with worker adjustment. Rather than attempting to restrict plant closings or mass layoffs, the Committee's bill seeks to expand and revitalize our worker adjustment programs in order to help dislocated workers make the transition from one job to another. It seeks to consolidate worker readjustment programs, and to assure that assistance reaches workers as expeditiously as possible. it is the first time that all aspects of a worker readjustment program have been addressed in a single piece of legislation.

While the focus of H.R. 1122 is on the readjustment process, the bill also contains provisions that are intended to help avoid unnecessary closings and mass layoffs. As well as it's importance to a successful readjustment program, notice and consultation, can also be critical in the search for alternatives to layoffs or closings. Notice makes workers and communities aware of imminent, job loss, and consultation provides a process whereby alternatives to a closing or mass layoff can be explored. It serves the interests of workers, communities and ultimately the economy when unnecessary job loss is averted. Because notice and consultation help to diminish the magnitude of the dislocation problem they also help to preserve the limited resources available for readjustment.

Like Secretary of Labor Brock's task force, the Committee believes it is in the interest of both the health of our economy and the well being of American workers to devote significant resources to a sensible and effective worker readjustment program. Some of the economic forces responsible for worker dislocation are inevitable and positive. Others, such as our growing trade deficit and the abandonment of domestic markets to imported goods, are unwanted and avoidable. All agree, however, that ours is a dynamic and sometimes fiercely competitive economy in which a certain number of business failures, consolidations, relocations, and cutbacks are inevitable. The primary purpose of H.R. 1122 is not to prevent those changes that are an inherent part of the functioning of the free enterprise system. Rather, the fundamental goal of the bill is to make possible an orderly process of adjustment when closings or mass layoffs are unavoidable.

SUMMARY OF THE BILL

The Economic Dislocation and Worker Adjustment Assistance Act creates a comprehensive system to provide prompt and effective adjustment and training services to dislocated workers. The bill is in two parts: Title I replaces the provisions of Title III of the Job Training Partnership Act. Title II provides for advance notification of, and consultation about, business closings and permanent mass layoffs.

Title I authorizes an appropriation of $980 million for the development and administration by the States of comprehensive adjustment programs for dislocated workers. The Secretary of Labor, after approving the States' program plans, allocates funds according to each State's population and rates of unemployment and long-term unemployment. The Secretary may retain 20% of appropriated funds for national, multi-industry, multi-state and demonstration projects.

Workers are eligible for services if they have been laid off from employment, have experienced long-term unemployment, or have lost their self-employment because of general economic conditions. States must maintain the capability to respond rapidly to imminent plant closings or mass layoffs and provide services to affected workers. In addition, a State may use the funds allocated to it for normal labor market services, correcting basic education deficiencies, vocational and on-the-job training, and income support. Services are delivered at the statewide level through a dislocated workers unit or office, and at the local level through substate grantees designated by the Governor, the chief local elected official, and the local private industry council.

Title II requires employers to give advance notice of facility closings and permanent mass layoffs to employees and to State and local governments. The amount of notice required depends on the number of employees affected, with 90 days required when 50 to 100 employees are terminated, 120 days for 101 to 499 affected employees, and 180 days when 500 or more employees lose their jobs. Exceptions are provided if the need for the closing or layoffs is not reasonably foreseeable, if the employees were hired for a short term project, or if the employer relocates within reasonable commuting distance and offers to transfer the employees. During the notice period employers are required to consult in good faith about the closing or layoffs upon request of the representative of the affected employees or local government. Penalties are established for failure to comply with these requirements.

PRIOR LEGISLATIVE AND OVERSIGHT ACTIVITIES

Legislation was first introduced to address the problem of plant closings and worker dislocation in the Senate during the first session of the 93rd Congress. The National Employment Priorities Act, S. 2809, introduced on December 13, 1973, sought to amend the Manpower Development and Training Act to require prenotification and assistance to affected workers, businesses and communities. S. 2809 was intended to serve as the first step toward a national policy for industrial relocation.

In the House of Representatives, the first "plant closing" legislation was sponsored by Congressman William D. Ford of Michigan during the second session of the 93rd Congress. Congressman Ford's version of the National Employment Priorities Act of 1974, H.R. 13541, was introduced on March 18, 1974. H.R. 13541 sought to amend the Fair Labor Standards Act of 1938 to require prenotification to affected employees and communities of business dislocations; to provide assistance (including retraining) to employees and affected communities threatened with dislocation; and to prevent federal support for unjustified dislocations. The bill was referred to the General Subcommittee on Labor of the Committee on Education and Labor, which held two days of field hearings on H.R. 135431, one in Detroit, Michigan on October 18, 1974, and another in Pittsburgh, Pennsylvania on October 19, 1974. Witnesses inlcuded several mayors and other civic leaders, displaced workers, union officials, business leaders and Senator Richard S. Schweiker.

In the 94th Congress, several plant closing bills were introduced including another version of Congressman Ford's National Employment Priorities Act, H.R. 76. The Subcommittee on Labor Standards held field hearings on May 9, 1975 in Akron, Ohio and on September 12 and 13, 1975, in Glassport, Pennsylvania and Shelby and Warren, Ohio to explore the need for a legislative response to the growing problems resulting around the country from plant closings. Witnesses included local government officials, business executives, union leaders and workers.

Congressman Ford reintroduced H.R. 76 in the 95th Congress. The Subcommittee on Labor Standards held a hearing on H.R. 76 in Washington, D.C. on August 15, 1978, which focused on the mental and physical health effects of job loss on displaced workers and which presented evidence that European laws similar to H.R. 76 were working well.

In the 96th Congress, jurisdiction over plant closing legislation was transferred from the Labor Standards Subcommittee to joint jurisdiction between the Employment Opportunities and Labor-Management Relations Subcommittees of the Committee on Education and Labor. The subcommittees held a joint hearing on January 18, 1980 in Los Angeles, California, on H.R. 5040, Congressman Ford's National Employment Priorities Act of 1979.

H.R. 5040 required the provision of notice to the Secretary of Labor and affected employees and local governments; required businesses to provide assistance to dislocated workers; and authorized the Secretary of Labor to provide assistance to affected employees, businesses and local governments. The main difference between H.R. 5040 and previous bills was the shift in responsibility from the federal government to the involved businesses, for compensating affected workers and communities. Witnesses included workers and union representatives who testified about first hand experiences with plant closures and their effects on the Los Angeles community.

Additional hearings were held by the Labor-Management Relations Subcommittee in Missoula, Montana on August 16, 1980, and in Eugene, Oregon on August 18, 1980. Witnesses at each hearing included workers, union representatives, business owners and managers, local government officials, citizens' groups and academics.

The Labor-Management Relations Subcommittee continued its consideration of plant closings and H.R. 5040 at a joint hearing held with the Subcommittee on Employment Opportunities in Martinez, California on October 15, 1980. Once again, testimony was heard from the entire spectrum of affected parties.

In the Senate, the Committee on Labor and Human Resources held three field hearings—in Newark, New Jersey on January 22, 1979; in Camden, New Jersey on October 29, 1979; and in Cleveland, Ohio on March 7, 1980, to address the plant closing issue and legislation before the Committee. At the latter two hearings, consideration was given to S. 1608, the National Employment Priorities Act and S. 1609, the Employee Protection and Community Stabilization Act, each of which required prenotification of closings or relocations of major industrial plants. Testimony was presented by several Members of Congress, affected workers, unions, businesses, local government officials and citizens' groups. Two more hearings were held in Washington, D.C. on September 17th and 18th, 1980. Witnesses at those hearings included representatives of firms which had implemented exemplary adjustment programs for their employees displaced in plant closings.

The Senate Select Committee on Small Business held a hearing on February 5, 1980, in Washington, D.C. on the impact of the U.S. Steel Corporation's decision to shut down 13 of its plants on the communities in which those plants were located. In the course of that hearing, the United Steelworkers of America presented testimony in support of a national policy on plant closures, but no specific piece of legislation was discussed.

The House Committee on Small Business held a series of seven oversight hearings which resulted in a report, entitled "Conglomerate Mergers—Their Effects on Small Business and Local Communities" in 1980. House Doc. #96-343, 96th Congress, 2nd Sess. (October 2, 1980). The report reviewed evidence that conglomerate corporations, because they lack local community ties and loyalties, are far likelier than other businesses to shut down or relocate facilities.

Three plant closing bills were introduced in the House of Representatives during the 97th Congress, but no action was taken on them.

Several bills were introduced in the 98th Congress, including H.R. 2847, Congressman Ford's revision of the National Employment Priorities Act. H.R 2847 sought to facilitate the economic adjustment of communities, businesses and workers; to require businesses to provide advance notice of plant closings and permanent layoffs; and to provide federal assistance, including retraining, to dislocated workers.

Congressman Silvio O. Conte also introduced a plant clossing bill, H.R. 5258, in the 98th Congress. The bill amended the National Labor Relations Act to make plant closing decisions and permanent layoffs a mandatory subject of bargaining.

The Subcommittee on Labor-Management Relations, chaired by William L. Clay, held three hearings on H.R. 2847, two in Washington, D.C. on May 4 and 18, 1983, and another in Birmingham, Alabama on July 25, 1983. In addition, a joint hearings was held by the Labor-Management Relations and Employment Opportunities

Subcommittees on July 8, 1983 in Los Angeles, California. Witnesses represented the spectrum of interested parties—workers, labor, businesses, government, and academics. The field hearings highlighted how plant closings affect every region of the country and every industry, including "high tech."

On September 6, 1983, the Labor-Management Relations Subcommittee favorably reported H.R. 2847 to the full Committee on Education and Labor. No further action was taken on H.R. 2847 by the Committee on Education and Labor during the 98th Congress.

The Committee on Banking and Urban Affairs, which had joint jurisdiction over H.R. 2847 in the 98th Congress, addressed the issue of plant closings and economic dislocation in its hearings on Industrial Policy. At a hearing on July 18, 1983, before the Subcommittee on Economic Stabilization, witnesses from unions, religious and community groups, and academia testified in support of federal intervention to mitigate the impact of plant closings on displaced workers and communities.

At the inception of the 99th Congress, on March 20, 1985, Congressman Ford, along with Congressmen Clay and Conte, introduced H.R. 1616, the Labor-Management Notification and Consultation Act of 1985. H.R. 1616 addressed only certain specific aspects of the previous bills—mainly prenotification and consultation. A joint hearing was held by the Subcommittees on Labor-Management Relations and Employment Opportunities to consider H.R. 1616 on May 15, 1985 in Washington, D.C. Witnesses included union and business representatives as well as academicians.

Both Subcommittees favorably reported H.R. 1616 to the full Committee on Education and Labor on June 26, 1985. On July 23, 1985, by a vote of 20–12, the Committee on Education and Labor ordered H.R. 1616 reported, as amended, to the House of Representatives. That report, Report 99–336, was filed on October 29, 1985. Pursuant to H. Res. 313, H.R. 1616 was taken up on the floor of the House on November 12, 1985, was considered on November 14, 1985 and November 21, 1985, and failed by a vote of 203–208.

Following the hearing held on May 15, 1985, the Ranking Minority Member of the Committee on Education and Labor, Mr. Jeffords, and the Ranking Minority Member of the Subcommittee on Labor-Management Relations, Mrs. Roukema, requested the Secretary of Labor, William E. Brock, to establish a task force to develop new or improved methods to deal with the problems of worker dislocation and plant closings. In October, 1985, shortly before the House took up H.R. 1616, the Secretary of Labor established a special 21-member Task Force on Economic Adjustment and Worker Dislocation "to examine the issue of plant closings and causes and effects of worker dislocations, to evaluate current programs and policies at the Federal, State and local levels, as well as those of foreign nations, and to report its results and recommendations directly to the Secretary of Labor." Secretary Brock instructed the Task Force to conduct a "comprehensive inquiry into problems faced by American industry and workers in adjusting to the certainty of technological change, foreign competiton and other market forces." The Task Force, chaired by Malcolm R. Lovell, Jr., held its initial meeting on December 17, 1985 and transmitted its findings in the form of a report, "Economic Adjustment and Worker Dislocation in a

Competitive Society," to the Secretary of Labor on December 31, 1986.

Early in the 100th Congress, on February 18, 1987, Congressman Ford, along with Congressman Clay, Congressman Martinez, Congressman Conte, and Congressman Evans, introduced H.R. 1122, the "Economic Dislocation and Worker Adjustment Assistance Act," premised in large part on the work of the Task Force on Economic Adjustment and Worker Dislocation as well as previous Congressional consideration of the issue of plant closings and economic dislocation. H.R. 1122 amends the Job Training Partnership At to expand and redirect State programs to assist the reemployment of dislocated workers; to require advance notice of plant closings and mass layoffs and consultation with employees and local governments; and to establish demonstration programs to test the potential of public service employment and training loans to increase the employability of dislocated workers.

The Job Training Partnership Act was enacted in October 1982. Title III of that Act is intended to provide assistance to dislocated workers. Since its enactment, questions have arisen regarding both the sufficiency of the Federal effort to assist dislocated workers and its effectiveness.

On March 17, 1987, a legislative hearing was held jointly in Washington, D.C. by the Subcommittee on Labor-Management Relations and the Subcommittee on Employment Opportunities on H.R. 1122. Witnesses included representatives of unions and business, former members of the Task Force on Economic Adjustment and Worker Dislocation, and public officials including Hon. Angelo R. Martinelli, Mayor of Yonkers, New York, testifying on behalf of the U.S. Conference of Mayors and Isiah Turner, Commissioner of the Washington State Employment Security Department and president-elect of the Interstate Conference of Employment Security Agencies. On June 9, 1987, the Subcommittee on Labor-Management Relations and the Subcommittee on Employment Opportunities were discharged from further consideration of H.R. 1122, the bill was considered by the Committee on Education and Labor, was amended, and was favorably reported by a vote of 23 to 11.

The Extent and Effect of Worker Dislocation

As the Brook task force asserted, the American economy is continually undergoing changes. The market forces which traditionally have influenced employment and industrial location patterns are being intensified by the pressures of international competition. The result is a churning of employment that causes millions of Americans to be out of work each year.

Worker dislocation is a national phenomenon. Recent evidence clearly demonstrates that the rates of dislocation are consistent throughout the country. Workers are as likely to experience dislocation whether they live in the North, South, East or West. (See Table I)

TABLE 1.—DISLOCATION OF ELIGIBLE WORKERS BY REGION, 1981–85 [1]

BLS region [2]	Adult employment	Worker dislocation		Rate of dislocation (percent)	
		Plant closings thousands	Total thousands	Plant closings	Total
New England	5,510	235	502	4.3	9.1
Middle Atlantic	14,671	676	1,486	4.6	10.1
East North Central	16,439	937	2,289	5.7	13.9
West North Central	7,334	388	916	5.3	12.5
South Atlantic	15,778	742	1,601	4.7	10.2
East South Central	5,558	371	834	6.7	15.0
West South Central	10,343	629	1,466	6.1	14.2
Mountain	5,068	312	674	6.2	13.3
Pacific	13,900	783	1,798	5.3	12.9
Total	94,601	5,074	11,567	5.5	11.8

[1] See Larry Mishel, "Dislocation, Who, What, Where and When," paper presented at Eastern Economic Association Meetings (Washington, D.C., March, 1987).

[2] Regions are: New England (Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut); Middle Atlantic (New York, New Jersey, Pennsylvania); East North Central (Ohio, Indiana, Illinois, Michigan, Wisconsin); West North Central (Iowa, Missouri, Nebraska, Kansas, Minnesota, North Dakota, South Dakota); South Atlantic (Delaware, Maryland, District of Columbia, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida); East South Central (Kentucky, Tennessee, Alabama, Mississippi); West South Central (Arkansas, Louisiana, Oklahoma, Texas); Mountain (Montana, Wyoming, Colorado, Utah, Idaho, Arizona, Nevada, New Mexico); Pacific (California, Hawaii, Washington, Oregon, Alaska). Region determined at the time of survey.

Source: Bureau of Labor Statistics, January 1986 and January 1984. Dislocated Water Survey and Geographic Employment Profile, 1983 (Bulletin 2215).

Even when business births outnumber business dissolutions there is often considerable dislocation on a local or regional level. The creation of new high technology jobs in the Silicon Valley is no solace to the thousands of rubber workers who lost their jobs in Los Angeles and Akron. Nor, obviously, are copper miners who lost their jobs in Montana or workers who lost their jobs in the Louisiana oil fields, helped by the creation of new aerospace jobs in Houston or Long Island. Even during times of general economic expansion, thousands of businesses in every part of the country implement decisions to close, relocate, or reduce the size of their operations, and millions of workers lose their jobs as a result.

Many of the millions of families affected by business closings and permanent layoffs each your suffer great losses, both financial and in terms of their mental and physical health. Earnings losses are the most immediate and obvious result of job loss. Research shows that most workers—and particularly older workers displaced by plant closings, suffer large income reductions even when they succeed in finding new work.

While the financial impact of job loss is substantial, the health effects of job loss can be even more dramatic. Researchers have documented numerous physiological changes caused by stress following plant closures, including increased uric acid, blood pressure, blood sugar, and cholesterol levels. These levels normally drop if the workers find new employment. Depression, grief, and a sense of bereavement usually afflict the victims of a closure as well. Suicide rates increase dramatically among those who experience plant closings. These feelings and the loss of self-esteem which most workers experience contribute heavily to the inability of displaced workers to adjust and find new employment.

Many case studies of plant closings have identified serious strains on displaced workers' families. Social Service agencies report huge increases in child abuse and spouse abuse after mass

layoffs as the displaced workers vent their anger and frustration on their families. Desertion and divorce increase especially in families where the breadwinner remains unemployed a year or more after the closure and family savings begin to be depleted.

The adverse effects of a plant closure or mass layoff usually are not limited to the displaced workers and their families. The domino or ripple effect of a plant closing has been well documented. As dozens of mayors, city managers, and other local leaders have testified before this Committee and other committees of Congress, private sector disinvestment decisions have public consequences—and those consequences can be devastating. In order to adjust local government budgets, prepare social service agencies for the needs of displaced workers, and pursue strategies to avert closings or replace relocation employers, community leaders and local officials need timely notice of plant closings and mass layoffs, as well as accurate information about the decision.

The Private Sector Response

A number of well-run and responsible companies have taken steps to notify and consult with their employees before making a closing decision and to minimize the harm their plant closing and employment cutbacks have caused. Either voluntarily or through agreements negotiated at the collective bargaining table, corporations such as Brown and Williamson, Dana, Ford Motor Company, Electrolux, Levi-Strauss, Bethlehem Steel, and others have provided many of the essential elements of a successful program of consultation and aid to help displaced workers adjust to their job loss and find a new job. Those elements include fair notice (some companies provide as much as 18 months' prenotification); consultation before a final decision is made; and, if a plant is to be closed, continuation of health benefits, counseling, and job search assistance.

In a number of cases, consultation between management and the representative of the employees has succeeded in averting a threatened shutdown. For example, when the Xerox Corporation proposed in 1981 to eliminate 180 production jobs at its Rochester facility, the Amalgamated Clothing and Textile Workers Union negotiated with the company over the proposal. Through the exchange of ideas and information at the bargaining table, productivity improvements were discovered which, when implemented, saved several million dollars and 180 jobs. When Chrysler proposed to close its Detroit Forge plant in 1982, the workers developed a renovation and conversion plan to which Chrysler agreed. The skilled trades workers modified forge presses, rebuilt scavenged machinery, and renovated buildings without interruping production at the facility. More recently, a plant closing which was announced two months in advance, in accordance with Philadelphia's plant closing ordinance, was averted through efforts of the city's Commerce Department. Despite an obsolete plant, poor labor relations and $4 million losses, Kelsey-Hayes was persuaded to purchase a newer, more suitable facility and retain 500 jobs in Philadelphia. With advance notice and the employer's cooperation—and a willingness to consider alternatives—many more plant closings could be averted.

When a plant closing cannot be avoided, responsible corporate action can blunt some of the impact on employees. Brown and Williamson is a good example of corporate responsibility in a plant closure. In its closings of cigarette production facilities in Virginia and Kentucky, the company gave its employees' unions at least 18 months' notice and negotiated an impressive package of benefits for the employees, including severance pay, availability of early retirement, continuation of medical insurance and transfer rights to other company facilities. The company also established an in-plan job search center, provided retirement and financial counseling, and helped to fund retraining for the displaced employees and a task force to help the community of Petersburg, Virginia find ways to use the abandoned facility.

Many businesses, however, do little or nothing either to consult with or to notify their employees about a mass layoff or a closing. The Committee has heard testimony for 13 years about businesses that shut down or relocated operations without so much as a day's notice to their employees, let alone any prior consultation or the kind of financial and technical support many employees need to adjust to their termination. Our hearings are replete with examples of large, profitable corporations that relocated operations to new facilities—a process that takes many months to accomplish, if not years—yet gave employees with 30 years of service no warning until a week or two before their jobs were eliminated and then left them to fend for themselves.

Recently there have been several studies documenting the fact that American workers are receiving shockingly little notice of mass layoffs or plant closings. The General Accounting Office conducted a survey of employers who undertook plant closings or mass layoffs between 1983 and 1984. Their study found that the median length of notice provided to blue collar workers was only seven days, and one-third of all business establishments shut down or laid off workers without any warning at all. Non-union firms provided their blue collar workers, on average, only two days' notice that their jobs would be eliminated.

The GAO survey provides solid evidence that the behavior of these firms was not compelled by economic circumstances. Only 8 percent of the establishments with 100 or more workers that closed or had a permanent layoff went bankrupt or filed for financial reorganization around the time of the dislocation. Yet 66 percent of all firms said they provided 14 days of advance notice or less to their workers.

GAO's survey results have been corroborated by an independent study of advance notification practices reported by the Bureau of Labor Statistics (BLS) in January of 1987. BLS surveyed employers who undertook permanent mass layoffs in seven States (Alabama, Arizona, Arkansas, Massachusetts, Texas, Washington, and Wisconsin) during the last six months of 1985. The survey reveals that in these States, which represent every region of the country, "About 2 out of 3 layoff events in the seven States occurred without an advance notice to workers." Even in Massachusetts, which has a State program to encourage employers to provide advance notice, 50% of all mass layoffs occurred without any warning to the employees.

These two studies—by agencies of both the executive and the legislative branch of the Federal government—prove beyond a reasonable doubt that the current "system" in our country of voluntary advance notice has been a failure.

THE NEED FOR NOTICE AND CONSULTATION; RECENT STUDIES

During the two years since the House narrowly rejected H.R. 1616 in November, 1985, five studies that domonstrate the need for notice and consultation have been completed by various government agencies and commissions, and the private sector.

The General Accounting Office (GAO) conducted a survey of employer who undertook plant closings and mass layoffs between 1983 and 1984. The survey's two purposes were (1) to estimate the magnitude of worker dislocation resulting from plant closings and permanent layoffs and (2) to obtain information on the length of advance notice provided to workers. As previously noted, the GAO report documented that the vast majority of workers receive little or no notice of closings or layoffs.

Secretary of Labor Brock's Task Force on Economic Adjustment and Worker Dislocation was composed of 21 members and included representatives of business, labor, government as well as leading academics. In December of 1986, the Task Force, chaired by former Under Secretary of Labor Malcolm Lovell, Jr., issued a comprehensive report, endorsed by twenty of the twenty one members of the task force, on the magnitude and nature of the problems associated with plant closings, the responsibilities of the public and private sectors, the experience of foreign countries, and recommendations to improve economic adjustment and international competitiveness.

The key findings and recommendation of the Task Force and its subcommittees concerning advance notice and consultation include the following.

1. Advance notice is an essential component of a successful adjustment program. A rapid response program like that established in Title I of this legislation cannot be effective unless program officials are made aware of plant closings and large layoffs as soon as possible.

2. There is no evidence that the productivity of the work force is adversely affected during a notification period.

3. Longer periods of notice may preferable to shorter periods as the evidence suggests that periods of notice of only two or three weeks have negligible effects on reducting the duration of unemployment of displaced workers.

4. Case study evidence suggests that advance notice of 6 months or more when coupled with no loss of severance benefits for early leaving and aggressive joint labor-management outplacement effort is effective in accelerating worker adjustment.

5. Longstanding European individual notice requirements and the more recently enacted (1960's) laws requiring employers to notify local officials prior to collective dismissals have not inhibited structural adjustment and have not been opposed by employers.

In early 1986, the Congressional Office of Technology Assessment (OTA) undertook an analysis of the costs and benefits of advance notice and repaid response to plant closings and mass layoffs. OTA

studied plant closings in Canada and the United States, surveyed State practices regarding rapid response of worker adjustment agencies to closings, and convened a panel of business, labor, government, and academic experts to help formulate options for improving public policy.

OTA's key findings include the following:

1. The best time to start a project for displaced workers is before a plant closes or mass layoffs begin; advance notice makes early action possible—although it does not guarantee it: (1) it is easier to enroll workers in adjustment programs before they are laid off; (2) it is easier to enlist managers and workers as active participants in displaced worker projects before the closing or layoff; (3) with time to plan ahead, services to workers can be ready at the time of layoff, or before; and (4) with enough lead time, it is sometimes possible to avoid layoffs, altogether. Knowing in advance about a coming layoff is obviously of some value to individual workers too, even if they do not get help from an organized project. They have the opportunity to adjust financial plans and get a head start on job hunting. In addition, many company managers see advance notice as a benefit to the company itself, by improving relations with the remaining workers, enhancing the company's reputation in the community, and conforming with company or values of fair and ethical treatment of its employees.
2. The amount of notice most workers now receive does not allow enough time to prepare an effective program of adjustment assistance for displaced workers.
3. Generally, it takes a minimum of two to four months to put in place a comprehensive program of adjustment services for workers.
4. The Canadian divisions of certain U.S. firms routinely give 2 to 6 months' advance notice while some of their U.S. divisions argue that it is "impossible" to give such notice and others say it is economically disadvantageous. The Canadian divisions report such advantages after giving notice as improved safety and productivity. None of the firms lost credit or customers after giving notice of a closing.
5. There is general agreement that fears about declines in productivity or worker unrest after advance notice is given are based on myth, not facts.

The most recent study of the costs and benefits of advance notice is the report of the joint Committee on Science, Engineering, and Public Policy of the National Academies of Sciences and Engineering. Entitled "Technology and Employment, Innovation and Growth in the U.S. Economy," the report is the result of 18 months of research and analysis by a very distinguished panel of educators, business leaders, scientists, union leaders, and experts in government and law.

The Academies' report reiterates many of the findings of the studies described above and forcefully recommends that Congress enact legislation to ensure that the victims of plant closings and permanent layoffs receive at least 2 to 3 months' advance notice.

The Academies' key findings include the following:

1. Voluntary advance notice is not functioning effectively—few workes are receiving even 30 days' advance notice.

2. The benefits of advance notice more than outweigh the costs. Advance notice enhances the flow of information to workers and consumers and distributes costs more equitably among workers, consumers, and firms.

3. Advance notice requirements should be national in scope and design, rather than being left to the discretion of the states and the cities. All of the U.S. work force should be covered by a Federal program.

4. Advance notice to workers could be ensured either by directly requiring employers to provide it or by providing tax incentives to encourage compliance. The former option has the advantages of directly affecting corporate behavior and, presumably, of benefiting a larger share of the U.S. work force.

5. Advance notice of as little as one month reduces the duration of unemployment among displaced workers by as much as 27%. This suggests that advance notice reduces the costs to taxpayers of unemployment insurance and related programs.

7. Workers who are not given advance notice of plant closings and layoffs suffer economic losses $4,500 and $15,000 greater than dislocated workers who do receive notice.

AMENDMENTS ADOPTED IN COMMITTEE TO ACCOMMODATE BUSINESS CONCERNS

H.R. 1122 establishes a readjustment program that seeks to improve the competitiveness of the American economy as well as to minimize the hardship experienced by workers when they lose their jobs. While striving to meet these objectives, the Committee has also been mindful of the concerns raised by employers about the provisions of H.R. 1122. During Committee markup several amendments to the bill were adopted which addressed such concerns.

The Committee adopted amendments offered by Congressman Ford which addressed specific concerns. The following language was added to the bill; "The remedies provided in this section shall be the exclusive remedies for any violation of this title." The language was added to make it clear that the back pay remedy provided in the bill is the sole remedy available to those whose rights under Title II of the act have been violated. Language was added allowing a court to award attorney fees as well as court costs to an employer who prevails in an action concerning the violation of a protective order under Sec. 205(c). An amendment clarified that the consultation requirement has been met if the employer has "consulted in good faith with [the employee and local government] representative or representatives concerning the proposed plant closing or mass layoff and any alternative or modifications to such proposal." It was further clarified that the amount of notice an employer is required to give is reduced appropriately "if the plant closing or mass layoff is caused by business circumstances that were not reasonably foreseeable as of the time that notice would have been required by such subsection." The language makes it clear that an employer is not required to give notice of a layoff or

closing to the extent unforeseeable events occur which necessitate the closing or layoff and which preclude the employer from giving notice and waiting to the end of the notice period before effecting the closing or layoff.

Congressman Murphy offered several amendments adopted by the Committee that modified the coverage of the bill. The bill does not require that employers give notice or consult with seasonal or temporary employees who have been hired with notice of the temporary nature of their employment. Such employees have notice when they are hired that their employment will be of limited duration and therefore have effective notice when they begin the job of when it will end. Notice is also not required when an employer offers an employee employment at a different location that is less than twenty-five miles from the original work site. The Murphy amendment also exempts from the notice and consultation requirements of the bill employees who have worked an average of less than fifteen hours per week. Finally the Murphy amendment clarifies that in order to trigger the notice and consultation provisions, fifty employees at a particular site must experience an employment loss.

Congressman Jeffords offered an amendment adopted by the Committee which makes it clear that an employer is entitled under the bill to pay its employees the equivalent of severance pay in lieu of notice. An employer need only pay backpay for each day that notice was required but not given to meet the notification requirement of the bill.

RESPONSE TO CONCERNS RAISED ABOUT H.R. 1122

Opponents of this legislation have made a number of arguments against it, but none of them withstands serious scrutiny. For example, the U.S. Chamber of Commerce claims that for financially marginal firms, to give notice that a closing may occur would be "a self-fulfilling prophecy." It is argued that creditors would react to the notice of impending layoffs by refusing to extend credit or by extending it on less favorable terms; that customers would seek other suppliers; and that employee morale would fall, leading to declines in quality and productivity.

These arguments are greatly overstated. Would-be-creditors usually obtain detailed information concerning the financial status of would-be-debtors before deciding whether to lend money. Thus, in the vast majority of cases, requiring an employer to give advance notice of a proposed closing or layoff would not provide any new information to the employer's prospective creditors. Moreover, insofar as an employer is seeking credit, and for that reason does not know whether a closing or layoff will be required, the denial of the credit could, in appropriate circumstances, constitute an unforeseeable circumstance which would permit the employer to reduce the notice period under the Committee's bill.

Much the same is true with respect to the claim that requiring advance notice of closings or layoffs would interfere with the ability of marginal employers to attract new business.

In most instances, before a customer places a significant order, the customer will assure himself that the manufacturer has the

wherewithal to satisfy the order. Thus, normally advance notice would not provide new information to prospective customers. And again, the unforseeable circumstances defense protects employers from situations in which an employer's failure to obtain an expected order is unforseeable and requires a closing or a layoff before the end of the notice period.

Advance notice of closings and layoffs seems to affect worker morale positively, if at all. As the National Academy of Sciences reports, "There is widespread agreement among business and union leaders that advance notice does not lower worker productivity after the announcement." Indeed, the National Academy of Sciences report cites studies which indicate that both productivity and quality improve after the announcement of a plant closing. (Technology and Employment, page 157)

Opponents claim that a Federal requirement that businesses give their workers advance notice of mass layoffs and closures would destroy management's flexibility to respond to economic change. They argue that every closing is different and that across-the-board rules cannot take into account the great variety of employers and markets.

H.R. 1122 has taken such objections into account. The notice requirement is this legislation is not rigid and inflexible. It is sensitive to firm size: the amount of advance notice required depends on the number of jobs to be eliminated. A closing involving 50 jobs would require only 90 days' notice; a closing involving 500 jobs would require 180 days' prior warning.

In addition, although these provisions are commonly referred to as "mandatory notice requirements" they are more accurately described as "severance in lieu of notice" provisions. This is because the exclusive remedy for an employer's failure to provide adequate notice is the payment of severance pay. As a result, employers are offered the choice in providing varying mixes of notice and severance pay when layoffs occur. For instance, an employer obligated to provide 90 days' notice of a layoff may elect to provide either 90 days' notice and no severance pay, or sixty days notice and 30 days' severance pay. The option of providing no notice and ninety days severance pay is also available. This flexibility arises because the notice provisions only set economic incentives to encourage employers to provide early notification of mass layoffs and plant closings. Since early notification is clearly beneficial to the workers and community involved, and imposes minimal, if any, costs to the affected employers, it is sound public policy to create economic incentives to encourage employers to act in a socially responsible manner.

The "unforeseeable circumstances" provision also provides flexibility. The particular situation facing a specific business is accounted for by allowing a reduction in the notice period—even its elimination—if unforeseeable circumstances prevent the business from providing the otherwise required amount of advance notice. Thus, an employer is not required to provide notice to the extent unforeseeable events occur which necessitate the closing or layoff and which preclude the employer from giving notice. Notice is only required from the point at which the need for permanent layoffs becomes reasonably foreseeable.

H.R. 1122's requirements are far less rigid than the proscriptions of European and Canadian laws regarding mass terminations. Yet it must be emphasized that there is no evidence that the notice laws of our nation's trading partners and competitors have harmed them in terms of international competitiveness or job creation. The report of the Secretary of Labor's Task Force on Economic Dislocation and Worker Readjustment identifies the European and Canadian advance notice laws as positive, "useful and transferable" elements in those countries' ability to adjust to economic change:

> We strongly recommend that U.S. firms notify workers and local government officials of impending plant closings and mass layoffs. In order for a quick response program like IAS to be effective, program officials must be made aware of plant closings and large layoffs as soon as possible. Starting the adjustment process early and coordinating it with labor, management and local officials significantly facilitates worker reemployment. Longstanding European individual notice requirements and the more recently enacted (1960's) laws requiring employers to notify local officials prior to collective dismissals have not inhibited structural adjustment and have not been opposed by employers."

The Task Force explicitly rejected the arguments against mandatory notice laws raised by the Chamber of Commerce and others:

> A major objection to the adoption of job security legislation patterned on European law is that European dismissal law is largely responsible for Europe's mistakes. A review of the empirical, although limited, evidence finds no support for such a strong conclusion. Moreover, surveys show that employers' objections to the legislation tend to focus not on the central provisions of the law, like advance notice, but on subsidiary aspects like the administrative complexity, protection for special groups like white-collar workers, and legal coverage of newly hired workers and small firms. These are unlikely to be incorporated into any U.S. legislation. On the other hand, individual advance notice continues to be an accepted business requiement, as it has been for many years in Europe in good times economically as well as bad.

The Secretary's Task Force also makes clear that the European laws regarding mandatory consultation have not posed serious problems for European industry and, in fact, make a positive contribution to adjustment efforts.

> Early and preliminary evidence from a recent study indicates that collective dismissal legislation including mandatory labor and management consultation does not inhibit structural change or worker adjustment.
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> * * * * * * *
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> "A period of advance notice may also increase the flexibility of the firm's response to structural change by giving labor and management time to consult on ways to help the

> firm adjust. Such consultation may preclude the necessity for introducing government adjustment programs or may complement such assistance efforts. The recognition among many countries of the growing importance of the role of labor and managment in private sector firms in the adjustment process suggests that some form of advance notice will become an integral part of the process.

Some have suggested that the information disclosure requirements of Section 204 are onerous and that business secrets are insufficiently protected against harmful disclosure. Yet nearly identical requirements are an integral part of the Bankruptcy Act's provisions governing employer abrogation of a collective bargaining agreement, where they have posed no serious problems for business. Here, where the rights and interests at stake are not merely the employees' particular pay scale, seniority, or work rules (as they are under the Bankruptcy Act), but the very existence of their jobs, the duty of the employer to provide relevant information is even greater. Moreover, in the Bankruptcy Act context, the employer is certifiably in financial trouble, whereas only 8% of employers which undertake plant closings or mass layoffs do so because of financial failure, according to the GAO.

Just as employers have not been harmed by the duty to disclose relevant information under the Bankruptcy Act, neither have they been harmed as a result of the similar duty under the National Labor Relations Act. For more than 50 years, employers have been obligated by the NLRA to provide their employees' collective bargaining representatives with financial information, production process and productivity information, information about subsidiaries and subcontracts, and a broad range of other information whenever that information is relevant to bargainable issues. For example, if an employer resists union wage demands by claiming an inability to pay, the employer may not refuse a union demand to audit the employer's financial records to verify its claims. *Steelworkers Local 5571* v. *NLRB,* 401 F.2d 434 (D.C. Cir. 1968), cert. denied, 395 U.S. 946 (1969).

No specific provision of the NLRA protects the confidentiality of the employer's internal financial information against disclosure to competitors or the world at large, yet experience has shown that such disclosures do not occur. Nevertheless, H.R. 1122 provides for protective orders and heavy damages as a deterrent to ensure that sensitive confidential information is not released.

Opponents have tried to portray H.R. 1122 as special interest legislation that would benefit no one but unions and union members, who now comprise less than 20% of the U.S. work force. In fact, however, advance notice legislation has broad support. Two years ago, a Lou Harris poll commissioned by Business Week magazine discovered that two-third of the public favored a law requiring businesses to give a year's advance notice of a plant closing. This year, a follow-up poll revealed that 86% of the American people favor a law requiring companies to notify workers and local government officials in advance of a plant closing. This support ranged across every region of the country and all occupations, regardless of the respondent's attitude toward business or party affiliation.

Americans recognize that advance notice is reasonable and humane.

Finally the Committee wishes to respond to allegations that the real purpose of H.R. 1122 is somehow to outlaw or prohibit plant closings. This is simply not true. Nothing in H.R. 1122 permits a union, a local government, a State, or any person to prevent a plant closing. The legislation would provide employees and local governments an opportunity to influence corporate decisions to reduce, relocate, or terminate operations, but the ultimate decision to do so or not would remain solely within management's discretion. H.R. 1122 does not grant any court the power to enjoin or delay a closing or a layoff; it merely provides reasonable money damage remedies for occasions when such actions are undertaken without fair notice or without consideration of the views of the affected employees, their unions, or their community's elected representatives.

COMMITTEE VIEWS

STATE WORKER READJUSTMENT COUNCILS

The Committee has adopted the recommendation of the Secretary of Labor's Task Force on Economic Adjustment and Worker Dislocation that every State should establish a tripartite committee to oversee the operation of the worker readjustment program. H.R. 1122 requires the Governor of each State to establish a State Worker Readjustment Council composed of equal numbers of representatives of labor, management and public and private nonprofit organizations. The Governor must give first consideration to qualified members of the State Job Training Coordinating Council and must then consider the recommendations of labor organizations, business, and other organizations with an interest in the reemployment of dislocated workers. The Governor must also assure that the Council's membership adequately represents both urban and rural areas of the State.

The Committee believes it is crucial to the success of the worker readjustment program to maximize labor-management cooperation and the involvement of workers and their representatives, particularly those from the industries most subject to dislocation. Labor organizations are underrepresented on many State Job Training Coordinating Councils (SJTCC), and limiting the membership of the State Worker Readjustment Council to members of the SJTCC may compromise its effectiveness. Moreover, the State Worker Readjustment Council's functions are too important to assign to a subcommittee of the SJTCC, which in most States helps to coordinate the employment and training activities of numerous State agencies but has little involvement in recommending policy regarding issues such as resource allocations or the approval of local service delivery plans.

The functions of the State Worker Readjustment Council include the development of the annual State plan required by Section 313. In essence, the State plan is a contractually binding description of how the State will carry out its responsibilities under Title III of the JTPA.

The Council is also responsible for advising the Governor regarding the establishment of statewide performance standards, the designation of substate areas, and the development of the formula by which Basic Readjustment Services funds are to be allocated among the substate areas.

The Council must review all substate plans submitted to the Governor and recommend whether the Governor should approve them.

In light of the importance of these functions, the Committee urges the States to fund the operation of the State Worker Readjustment Councils promptly and adequately. After enactment of the Job Training Partnership Act, States initially failed to provide adequate staff resources for the SJTCCs. That mistake should not be repeated.

RAPID RESPONSE

The bill requires each State to designate an identifiable dislocated worker unit (DWU) or office with the capability to respond to mass dislocation events throughout the State. In States where an existing unit already performs this function or has a capacity to do so, the State may choose to designate that unit and charge it with carrying out the rapid response functions required by the bill. The Committee contemplates that many States will create a new unit to serve this function. The Committee is not concerned with which method is adopted, as long as the result is a single unit which is identifiable throughout the State to businesses, workers and other governmental agencies as the initial governmental contact point in the event of a mass dislocation event. This follows the recommendation of the Secretary of Labor's Task Force on Economic Dislocation and Worker Adjustment.

There is considerable evidence that one of the most serious defects in the current dislocated worker program under Title III is the absence in most States of a rapid governmental response mechanism, even when an employer provides advance notice of a mass layoff or closing. The September 1986 Office of Technology Assessment (OTA) Special Report entitled "Plant Closing: Advance Notice and Rapid Response" noted this deficiency and found that, as a result, very few workers or companies are even aware of the existence of Title III services.

The Committee strongly believes that, for the programs authorized by this bill to work, the State can do this in a variety of ways, but, for mass dislocations, the most effective manner is to establish on-site contact with an employer and employee representatives within a short period of time (preferably 48 hours) after the dislocation event becomes known.

In visits to Canada and during Committee hearings on this bill, the Committee has been favorably impressed with the success of the labor-management committee approach utilized in Canada. Moreover, the Committee notes that the Canadian approach was singled out among all foreign approaches by the Task Force on Economic Adjustment and Worker Dislocation as having the "highest degree of replicability for the United States." Moreover, the Canadian approach has demonstrated usefullness in layoffs involving both large and small businesses. For example, in industrial Ontar-

io, 31% of the companies participating in the Industrial Adjustment Service (IAS) program involve fewer than 60 employees. In rural Nova Scotia, this increases to 67% with 19% involving fewer than 20 employees.

The provisions of sections 303(b)(5) and 314(b)(B) are modeled after the IAS and are intended to replicate that highly successful program.

The DWU is to include specialists who have the responsibility of making the initial contact with the employer and the worker representatives and providing them with information regarding the availability of relevant public programs. They are to assist companies and workers in the establishment and operation of joint labor-management committees designed to address human resource needs, including mass dislocations. The committees are composed of worker and management representatives and a chairman who is not affiliated with either side. A DWU specialist begins work on establishing the committee layoffs. In addition, the DWU specialist participates as an advisor in committee meetings and other functions.

The Committee operates pursuant to an agreement signed by the employer, a worker representative, and the government. The DWU specialist can be authorized to sign the agreement on behalf of the government so that an agreement can be finalized immediately. This agreement should provide the basis for shared financial participation between the company and the State. In Canada, according to testimony presented to the Committee by the IAS, the average operating cost of such committees in the second half of 1986 was $14,000 of which IAS's share averaged $6,100. The average cost per worker has been estimated at $93, with a return of $710 per worker in savings resulting from the success of the program.

The principal objective of the joint committees is to develop employment alternatives for affected workers. This involves a broad range of potential activities, including local job identification activities, enrollment in training, coordination with governmental programs and services, assistance in self-employment, early retirement planning, consideration of employee buyouts, counseling, and other forms of employment assistance.

In a typical situation, the first task of each committee would be to compile all relevant information regarding each employee through a questionnaire. With this information, the committee members can develop a marketing strategy for each employee and then make an aggressive search of businesses in the surrounding area which might have openings. Ideally, committee members would include individuals whose own position (e.g. plant manager, foreman) gives them personal knowledge of the abilities and skills of each employee. This helps the committee members to match the unique needs and abilities of affected employees with the needs of specific employers who have job opportunities.

The members of the committee are selected in an informal fashion by the parties. Where there is a union, the union selects worker representatives for those employees who are unionized. Where there is no union, the selection is made by the employees themselves. The formation of a committee in a non-union setting has not proven to be an obstacle in Canada. According to a 1984

survey conducted by Abt Associates of Canada, 66 percent of the committees nationwide were formed in a non-union setting, roughly matching the union/non-union ratio in the manufacturing sector in Canada.

In the formation of a labor-management committee, each side must be provided the opportunity for equal participation. However, the committee may proceed with other than equal participation if the parties so choose. Nothing would preclude specialists from the DWU from providing assistance to affected employees when a labor-management committee is not formed.

Ideally, a neutral chairman would be selected at the first meeting, usually from a list provided by the DWU specialist. The DWU is required to maintain a roster of available chairmen. The chairmen should be persons whose backgrounds would enable them to open doors in the community. The chairman is responsible for organizing the committee's work and assigning tasks.

The Committee continues to hold meetings and assist employees with placement until a judgment is made by the members that the committee has fulfilled its purpose, even though there may still be employees who are not yet reemployed. At this point, the committee disbands and the chairman is required to file a report with the DWU which should include an account of the committee's activities and a specific accounting of the results of the committee's work.

The Committee believes that, for the DWU to fulfill its goals, it is imperative that its specialists serve as more than a simple conduit for providing funds and technical assistance to the committees. Part of their time should be spent keeping in touch with employers throughout their assigned area. The specialists also have the responsibility of providing or obtaining appropriate financial and technical advice and liaison with economic development agencies and other organizations to avert worker dislocations. This "network" should enable them to aniticipate layoffs and closures as well as potential job opportunities.

The bill prescribes these minimal guidelines and leaves room for the State DWU's to adapt their rapid response capability to their own unique needs. The Committee strongly believes that, for each State system to work, it will need highly qualified dislocated worker unit specialists who, based upon their background and skills, are able to establish a rapport with the private sector. That rapport is essential to the creation of a climate which embraces the use of labor-management committees to address mass dislocations.

The Committee recognizes that, at the outset, States will need assistance in training specialists to perform these responsibilities. Consequently, section 352(d) requires the Secretary of Labor to provide training of State staff in rapid response methods, including proven methods of promoting, establishing, and assisting labor-management committees.

The Committee is concerned that the needs of individuals whose displacement has resulted from events other than mass layoffs or plant closings be met. Many worker dislocation events involve small numbers of workers at varying intervals, in which case utilization of that approach described above may be inappropriate. This is particularly true for dislocated workers in sparsely populated areas such as individuals who either own or work for small busi-

nesses, or for dislocated farmers and farmworkers. For these individuals, early response in the form of widespread and aggressive outreach, the provision of financial evaluation and counseling (where appropriate for determination of eligibility), and initial assessment and referral to other available services could be the key to their participation in job training programs. Therefore the Committee has directed each State to ensure that the capability exists to respond to dislocation events in such situations. States may choose to assist substate areas in establishing regional centers or to supplement substates services by providing funds from state set-asides for additional outreach, financial counseling and assessment activities. The Committee does not intend the State to duplicate substate services and expects that the State will coordinate its activities closely with substate grantees.

DESIGNATION OF SUBSTATE AREAS

Recognizing the benefit of building on the existing service delivery structure established under the Job Training Partnership Act (JTPA), the Committee has determined that existing service delivery areas (SDAs) serving populations of 200,000 or more, should be automatically designated as substate areas for the purposes of the Worker Readjustment Program. The Committee believes that the designation of substate areas of this size provides for increased local input in development of individual areas' dislocated worker programs. This determination is especially important to rural localites, ensuring equitable involvement in the development of plans even in areas where population density is less concentrated. The Committee also believes that by building on the proven JTPA delivery structure, coordination between local employment and training programs will be increased, duplication minimized, and that time will be saved in implementation of the program that may be otherwise taken up in the establishment of an entirely new system of substate areas.

The Committee's intent in automatically designating substate areas of 200,000 or more, does not preclude the Governor from designating substate areas with either larger or small population bases. In fact any two or more contiguous service delivery areas that in the aggregate have a population of 200,000 or more may request substate designation. In such instances, the Governor may deny such a request for designation, if it is determined that the request would not be consistent with the effective delivery of services to eligible dislocated workers in the relative labor market area, or would otherwise be inappropriate. No existing service delivery areas however may be divided between two or more substate areas, and all service delivery areas in a state must be included within a substate area. Further, substate area designations may not be revised more than once each two years. The Committee also intends that existing rural Concentrated Employment Programs (CEPs) which are designated as service delivery areas for the purposes of the Job Training Partnership Act, be designated as substate areas for the purposes of this title as well.

SELECTION OF SUBSTATE GRANTEE

Each substate area shall designate a grantee. It is the intent of the Committee that the substate grantee be chosen through a three-part agreement achieved among the Governor (with advice from the State Worker Readjustment Council), the local elected officials and the private industry council or councils for the substate area. If no agreement can be reached the Governor will select the substate grantee. The Committee expects that, in the selection of the substate grantees, consideration will be given to such factors as delivery of the services through a State agency at substate locations and prior experience in administering dislocated worker programs.

The Governor retains the authority to choose a State agency to be the substate grantee in every substate area if no contrary agreement is reached. However, the Governor is expected to enter into good faith negotiation to reach agreement.

No presumption is made by the Committee that the administrative entity or the grant recipient under Title II of the Job Training Partnership Act will serve as the substate grantee. Entities eligible for designation under this title include: Private Industry Councils, service delivery area grant recipients and administrative entities, private non-profit organizations, units of general government, local offices of state agencies, and other public agencies. The Committee further intends that the general program requirements and the Federal and fiscal administrative provisions applicable to administrative entities or grant recipients under Title I of JTPA, are applicable to substate grantees under this title.

SUBSTATE PLAN

Substate grantees are required to submit substate plans to the Governor before any funds may be allotted to the substate grantee. The plan provides the manner in which the authorized activities will be carried out in the substate area.

The plan is developed on an annual basis by the substate grantee. Prior to submission to the Governor, the local Private Industry Council(s) and local elected officials shall have the opportunity to review and comment on the plan. The committee intends that such review and comment be performed in a timely fashion, thereby not delaying the implementation of programs in the substate area.

The Governor approves substate plans based upon the recommendations of the State Worker Readjustment Council. It is the expectation of the Committee that unless there is substantial disagreement regarding the plan, questions as to the process by which the plan was developed, or reason to believe that the activities described in the plan are inconsistent with the intent of the title, that the Council and the Governor should act on the plan within a reasonable period of time, so that the provision of services is not delayed or interrupted.

The substate plan should include a description of the activities that will be conducted to implement the programs authorized. The plan provides the blueprint regarding the clients to be served, the basic readjustment and training services to be provided, the coordi-

nation design, the performance standards to be applied and a detailed budget. If the substate area participates in providing rapid response activities in concert with the State, these must also be described.

The past involvement of local elected officials and Private Industry Council(s) in providing policy guidance and oversight in Federal training programs should not be ignored. Therefore, it is the intent of the Committee that the local plan describe the methods by which the private industry councils and local elected officials will be involved in promoting and developing community support, resources and local cooperation for programs operated under this title, including rapid response.

SUPPORTIVE SERVICES AND BENEFITS

Last year, OTA released a report entitled, "Technology and Structural Unemployment: Reemploying Displaced Adults" which examined the problems of displaced workers in depth. The report concluded that, "to help provide the skilled workforce that American industries need to maintain competitiveness in the world economy, the program will have to reach many more displaced workers and emphasize training—particularly basic skills training—more strongly."

The report also concluded that, "adult displaced workers who desire training must find some other way of supporting themselves, indeed in most (Title III) projects the criteria for selecting displaced workers for training is that they have income to see them through."

Cognizant of the importance and the need to provide income benefits and supportive services for these individuals, the Committee bill provides that up to 15 percent of the basic readjustent funds and up to 30 percent of the retraining funds may be spent for these activities.

Under the basic readjustment program the Committee bill authorizes such activities as: early readjustment assistance, outreach, assessment, job clubs, local job search and job development. The Committee recognizes that in some areas of the country job search assistance and related activities are effective tools which hlep displaced workers become reemployed. However, for many semiskilled and unskilled workers, training or retraining, particularly of longer duration, is necessary for reemployment. The OTA report found that, "few adult displaced workers can undertake full-time training without some form of income support. For most, UI lasting 26 weeks is the main source of support. Some training institutions have been able to devise effective courses that fit the constraints of workers' UI eligibility. However, many kinds of longer term training are effectively foreclosed for displaced workers who have no other source of income support than regular UI benefit."

In 1986, the number of unemployed persons who received unemployment insurance was 33 percent. This figure is in sharp contrast to the 1975 figure which showed that 81 percent of the unemployed received UI. Moreover, studies have shown that for the average worker UI provided less than a bare minimum of support considering that in 1984 the average weekly benefit was $119.

For participants not receiving unemployment insurance under any State or Federal unemployment compensation law, the Committee bill also authorizes needs-based payments. The Committee bill also provides incentives for those who are terminated or permanently laid off from employment and who enroll in training by the end of the 10th week to be paid a weekly benefit, not to exceed their regular unemployment compensation for the period of the retraining. For those individuals otherwise on layoff who enroll in retraining prior to the end of the 15th week of UI, a priority is made available.

The Committee believes that it has acted in a responsible manner by increasing the benefits and supportive services available to displaced workers under this bill. It is the Committee's view that these benefits and services will enable a substantial number of workers to take advantage of the training opportunities that will lead to good jobs and brighter futures not only for themselves but also for the Nation as a whole.

RURAL CONCERNS

The Committee made a concerted effort to meet the employment needs of both urban and rural America. As in amendments to the Job Training Partnership Act which were enacted last Congress, the Committee again includes in its definition of eligible participants under Title III, dislocated individuals who are self-employed, including farmers and ranchers. In addition, the Committee provides language further clarifying that a dislocation event "may also be the cessation, or the process of cessation, of self-employment with resulting loss of livelihood in operation of a business enterprise, including farming and ranching." The Committee encourages States, where appropriate, to develop definitions which recognize farmers in the process of going out of business as eligible under the Worker Readjustment program, provided they can demonstrate that they are ceasing farming as their primary means of livelihood, based on financial distress. The Committee intends that dislocated farmworkers, and other workers in businesses where they are ineligible for unemployment insurance due to the nature of the enterprise, be determined as eligible for participation in program under this Act as well.

In order to adequately identify those farmers and ranchers who would qualify for assistance under the Worker Readjustment Program, the Committee's bill amends Title IV of JTPA, the Cooperative Labor Market Information Program, requiring the Secretary of Labor to develop a means by which statistical data relating to permanent dislocation of farmers and ranchers can be collected. The provision further directs the Department to collect such data. When available, it is the Committee's intention that these new statistics be included in the formula which determines allotment of funding to States for basic readjustment services, as required under Part C, Section 332(a)(c)(2) of the Act.

ALLOTMENT OF FUNDS UNDER WORKER READJUSTMENT TRAINING

The Committee recognizes that any newly established program needs time to be implemented and for associated problems to be re-

solved. Such was the case with Title III, the Dislocated Workers programs under JTPA. Unfortunately, one of the problems that has plagued the Title III program almost from the beginning is the amount of unexpended funds being carried over each year.

Initially, the slow expenditure of Title III funds was attributed by program officials to the newness of the program, attention by state officials to other parts of JTPA, and delays in the availability of funds from the Department of Labor. According to program officials, as they gained experience with the program, States would accelerate the commitment of Title III funds to specific projects and funds would be spent more quickly. However, according to the Department of Labor the amount of such unspent funds for this past year exceeded the funds newly appropriated to conduct the program.

In a March 1987, General Accounting Office (GAO) report "Dislocated Workers: Local Programs and Outcomes Under the Job Training Partnership Act" one of two issues that emerged regarding the administration of Title III projects was the slow implementation of the projects and the slow State expenditure of Title III program funds. It was reported that Title III projects receive their money through several different mechanism, but that most dislocated worker projects receive their money through the RFP method.

The RFP approach gives State officials ultimate control over how Title III resources are spent since proposals inconsistent with State plans can be disapproved. Thus, States have discretion in targeting Title III services to areas with particularly high unemployment rates or specific business closures and can, if they wish, avoid spreading resources too thinly to create effective programs.

The RFP approach also has some drawbacks. For example, the Office of Technology Assessment reported that it is not unusual for the implementation of projects to be delayed 3 or 4 months. Westat, Inc. made a similar observation when it reported that the RFP approach lengthened the decision-making process.

A further indication of the impact of the RFP approach on the implementation of the Title III program is the rate of expenditure of program funds. Slow State expenditures of Title III funds may indicate that some States are not quickly responding to the dislocation of workers by business closures or permanent layoffs. While 16 States had expended more than 80 percent of their cumulative allocations of Title III funds as of June 30, 1985, 16 States had expended 60 percent or less. For the 24 States that did not use the RFP approach for funding Title III projects, the average percentage of funds expended was 68 percent as of June 30, 1985. For States using the RFP approach, the average percentage of funds expended was 60 percent. While most States using the RFP approach (58 percent) expended 60 percent or more of their Title III funds and 8 had expended more than 80 percent, 11 of the 16 States that had expended less than 60 percent of their funds used the RFP approach method.

In order to address the concerns that have grown regarding large amount of unexpended funds, the Committee accepted an approach to funding the long-term training programs under this title that establishes annual and semi-annual funds availability targets for

each state and allows the Secretary to reallocate unexpended funds on a semi-annual basis. The annual fund availability target for each State is fixed as an amount equal to 1⅔ times the amount of the allotment under the formula distribution in section 332(a) for basic readjustment services. Based upon expenditure rate for the first six months of a program year, the Secretary shall decrease, if necessary, the semi-annual target for the subsequent six months. The Governor of a State may request the Secretary to adjust the availability targets to better reflect such things economic conditions or extraordinary need.

The Committee believes that providing a mechanism whereby the Secretary can reallocate funds from states that are not expending their funds at a rate consistent with their targets to those states which may have a greater current need, allows the funds under this program to be utilized more effectively and efficiently. The strategy though, does provide sensitivity to the need for some funding stability by providing a basic standard by which the annual availability targets are established. Further, if the Governor of the State requests, funds under this part may be utilized for basic readjustment services, without affecting the formula allocation for that part for affecting the overall annual target under this part.

The Committee intends that the funds provided for dislocated worker readjustment services be sufficient to allow them to complete the training programs in which they have enrolled. Adequate readjustment may not be accomplished within one year and the Committee is aware that some programs have been forced to temporarily close their doors until grants are renewed. The Committee hopes that the Department of Labor, and the State, will make every reasonable effort maintain uninterrupted funding until the dislocated workers have completed their readjustment programs.

The Governor of each State (after considering the recommendations of the State Worker Readjustment Council) shall establish appropriate procedures for making funds available for use in substate areas under this part. The Committee hopes that procedures established by the States to facilitate reallocation of unexpended funds among substate grantees do not become administratively cumbersome.

PART E—FEDERAL READJUSTMENT PROGRAMS

Federal Readjustment Programs

Under Part E of the bill, Federal Readjustment Programs, the committee authorizes the Secretary to conduct special projects of national or regional concern. The Committee believes that a number of displacement problems throughout the Nation, particularly those involving on-going dislocation events, warrant the Department of Labor's attention, and may be best addressed through projects that extend for a period greater than one year in duration. The Committee also provides the Secretary with the authority to conduct an evaluation of the effectiveness and impact of such projects upon their completion. Such evaluations should provide the Secretary, as well as Congress with increased insight on how to more effectively deal with these on-going concerns.

Rural Readjustment Demonstration

The bill includes authority for the Secretary to provide demonstration funds to States hardest hit by adverse agricultural conditions for the purpose of providing readjustment and training services to dislocated rural workers.

The current rural crisis has triggered a substantial, unique need in rural states for special dislocation services to farmers, ranchers, and other rural workers. Rural dislocation is significantly different from industrial dislocation. Therefore, Section 352(h) of the Act authorizes the Secretary to enter into agreements with rural States to enable them to address the special needs of rural workers.

To receive funds, a State must submit a plan for approval by the Secretary, describing how the State will utilize the available funds to meet the basic readjustment needs of eligible dislocated rural workers. A State receiving funds must coordinate services provided under this demonstration with other relevant programs targeted to rural areas. States are also encouraged to provide services to eligible individuals at one site.

THE REALLOCATION OF JTPA TITLE III FORMULA FUNDS

The Committee continues to find that there is a significant amount of unexpended JTPA title III formula funds. This problem has been identified for more than one year and still exists. More than one third of the formula funds remain unspent for the period of October 1, 1983 to June 30, 1986. The Committee urges the Secretary, in consultation with the Committee, to develop and implement a procedure by September 15, 1987, to reallocate unspent funds exceeding a national criterion to those states with unemployment rates in excess of the national average and which have spent their funds according to the same criterion.

Job Banks

The Committee bill authorizes $50 million for fiscal year 1988 and such sums as may be necessary for each succeeding fiscal year to enable the Secretary of Labor to make grants to the States to develop and implement computerized job bank systems.

The Committee believes that the automation of public employment services throughout the Nation would help bring a far greater number of job-seekers and potential employers together in an efficient and timely manner.

Fewer than half of the State are operating automated job matching systems and these are generally limited to urban areas. Some have on-line computer capacity; several provide batch output only. Some State systems still rely upon manual systems for filing paper or card job applicaitons and orders. Regardless of where each individual State is in establshing an automated job matching and labor market information network, every effort should be made by States, through this program, to extend their computerized systems to rural as well as urban areas.

State job bank systems should utilize computers not only for matching employers and jobseekers but also to display, in an understandable and appealing fashion, occupational supply and demand information and projected trends. The Committee encour-

ages State employment service agencies to develop systems that concentrate on identifying industries which are hiring and skills areas for which there is a demand providing better linkages between businesses, job-seekers, and the agencies. Such systems should be accessible by libraries and schools. In particular, career information delivery systems including shcool career counseling programs) should utilize these job bank systems.

The Committee emphasizes the importance of having systems which are compatible with other related systems. Information should be interchangeable among job placement, occupational information, and employment insurance programs as well as work incentive programs and management information systems throughout the employment and training system. Such compatibility is essntial not only within States but among States, as well as with the Federal Government's regional and National offices.

INTERNATIONALLY RECOGNIZED WORKER RIGHTS

Section 593(b) requires the Secretary of Labor, in consultation with the Secretary of State, to conduct a study of the extent to which countries recognized and enforce, and producers fail to comply with, internationally recognized labor rights. It further requires that the Secrtary of Labor report to the Congress on the study biennually.

The Committee intends that the Secretary of Labor's study supplement the annual human rights country reports required pursusnt to Section 505(c) of the Trade Act of 1984 by providing objective, factual determinations free of foreign policy considerations, on the extent to which internationally recognized worker rights are protected by law and in practice in each of the countries on which reports are prepared. It is the Committee's intent that this study and report identify so-called free trade or export processing zones where they exist and describe the status of internationally recognized worker rights within them, including the extent to which those rights differ in law or practice from those generally existing in those countries.

In those countries exhibiting the least progress towards recognition and protection of internationally recognized worker rights, the Secretary shall identify the major products for international trade within those countries. It is the intent of the Committee that the Secretary idenfity, to the extent possible, those producers operating outside of the United States, including American corporations operating outside of the United States, producing goods or services for international trade who do not provide conditions of employment consistent with internationally recognized worker rights. It is not the Committee's intent to require reports on producers operating within the United States. Where a country has enacted laws protecting internationally recognized labor rights and makes a good faith effort to enforce those laws, the Secretary need not investigate any producer operating within that country. Where a country allows any producer to operate in violation of internationally recognized workers rights, whether intentionally or through willful negligence, the Secretary shall identify this condition, identifying the country and the producer, in reporting to the Congress.

The Committee intends that the Secretary of Labor, in compiling this annual study and report to the Congress, define internationally recognized worker rights in a manner consistent with the following:

1. The right of association is intended to include the right of individuals to establish and join organizations of their own choosing without previous authorization; to draw up their own constitutions and rules, elect their representatives, and formulate their programs; to join in confederations and affiliate with international organizations; and to be protected against dissolution or suspension by administrative authority.

2. The right to organize and bargain collectively is intended to include the right of workers to freely choose their own representatives for the purpose of negotiating collectively with employers to improve wages and working conditions, and negotiating the prevention and settlement of disputes; the right to protection against interference; and the right to protection against acts of antiunion discrimination. Governments should promote machinery ensuring the ability of workers to seek to improve their circumstances through their own organizations and ensuring the fair resolution of disputes between employers and employees and their organizations in a manner that accounts for legitimate needs and asperations of workers. The right to strike is not inherent in the right to organize and bargain collectively, though its absence in frequently indicative of a lack of meaningful rights. Reporting on restrictions affecting the ability of workers to strike should include information on any procedures that may exist for safeguarding workers' interests.

3. Forced or compulsory labor is intended to be defined as work or service exacted from any person under the menace of penalty and for which the person has not volunteered. Compulsory military service, certain civic obligations, certain forms of prison labor, work exacted in emergencies, and minor communal services normally are not considered to fall within the prohibition against forced or compulsory labor. It is the Committee's intent, however, that the Secretary, to the extent possible, identify producers operating outside of the United States that produce goods or services for international trade utilizing forced or compulsory labor, including labor or services performed by military or civilian draftees or prison convicts, in addition to identifying countries that do not prohibit forced or compulsory labor.

4. A minimum age for the employer of children is intended to be defined as an effective abolition of child labor by raising the minimum age for employment to a level consistent with the fullest physical and mental development of young people and the prohibition of the employment of children in hazardous conditions or at night.

5. Acceptable conditions of work with respect to minimum wages, maximum hours or work, and occupations safety and health are intended to be defined as the establishment and maintenance of machinery, adapted to national conditions, that provides for minimum working conditions. Minimum wages are wages that provide a decent living for workers and their families and which ensure a distribution of income sufficient for the development or enhancement of a domestic market within the country in question. Maxi-

mum hours of work are working hours that do not exceed 48 hours per week with at least one full 24-hour rest day and a specified annual paid holiday. Acceptable conditions of occupational safety and health are minimum conditions necessary for the protection of the lives and health of workers.

MONITORING INTERNATIONAL WORKER RIGHTS COMPLIANCE

Increased interest has been expressed in recent years by international organizations such as the International Labor Organization (ILO), by Federal agencies and by private groups—both domestic and international—in the postures of governments toward compliance with internationally recognized worker rights.

This bill provides the sum of $5 million annually to the Secretary of Labor to contract with responsible private organizations with expertise in labor rights so that they in turn can offer appropriate assistance to trade unions to inform various organizations and others concerned with these matters as to the actual policies of their governments.

THE DUTY TO CONSULT BEFORE PLANT CLOSINGS AND MASS LAYOFFS

As already noted, one purpose of requiring pre-notification is to provide an opportunity for the employer and the representative of the affected employees to explore alternatives to a proposed closing or mass layoff, thereby providing employees an opportunity to discuss the reason for decisions that will have a tremendous impact on their lives. The bill is designed to achieve this end by obligating the employer, before making a final closing or mass layoff decision, to engage in a good-faith and thorough exploration with the employees of alternatives to or modifications of the contemplated closing or mass layoff.

This duty to consult is intended to supplement—but not supplant—the duty to bargain that is imposed on employers by section 8(a)(5) of the National Labor Relations Act, or the Railway Labor Act. To understand the relationship between these two complementary duties, a brief review of the bargaining obligation that exists under the NLRA is required.

The NLRA requires employers to bargain in good faith with the representative of the employees with respect to "wages, hours, and other terms and conditions of employment." NLRA section 8a)(5) & (d). If the parties are unable to reach agreement on one of these mandatory subjects of bargaining, either side is free to use "economic pressure devices . . . to make the other party inclined to agree on one's terms." *Labor Board* v. *Insurance Agents,* 361 U.S. 477, 489(1960). But under the NLRA an employer is not permitted to make unilateral changes in the terms and conditions of employment unless and until the employer has reached an "impasse" in bargaining with the union over proposed changes. *Taft Broadcasting Co.,* 163 NLRB 475, 478 (1967), enf'd 395 F.2d 622 (D.C. Cir. 1968).

There is no settled rule for determining when a plant closing or mass layoff will be considered a "mandatory subject of bargaining," and the law in this area is in flux. The Supreme Court has issued two decisions that point in opposite directions: in *Fiberboard Corp.*

v. *Labor Board,* 379 U.S. 203(1964), the Court unanimously concluded that the employer was obligated to bargain over its decision to subcontract work and lay off the employees who had been performing that work, but in *First National Maintenance Corp.* v. *NLRB,* 452 U.S. 666 (1981), the Court held (erroneously in the Committee's view) that an employer's decision to liquidate part of its business and lay off the workers employed in that part of the business was not a mandatory subject of bargaining.

Subsequent to *First National Maintenance,* the Labor Board has taken conflicting positions as to the scope of the bargaining duty. In *Bob's Big Boy,* 264 NLRB 1369 (1982), for example, the Board, by a 3–2 vote, held that bargaining is required over a decision which "involves an aspect of the employer/employee relationship that is amenable to resolution within the collective bargaining framework," id. at 1330; on that basis, the Board concluded that the employer in that case was required to bargain with the union before deciding to discontinue its shrimp processing operation and to purchase shrimp from an outside processor. But in *Otis Elevator Company* 269 NLRB 891 (1984), a new majority of the Labor Board, in a decision the Committee believes was wrongly decided, reversed directions entirely and held that there is no duty to bargain over "decisions which affect the scope, direction or nature of the business," id. at 893—"includ[ing], inter alia, decisions to sell a business or part thereof, to dispose of its assets, to restructure or consolidate operations, to subcontract, to invest in labor-saving machinery, . . . and all other decisions akin to the foregoing," id. at 893 n.5, unless the decision "in fact turns on direct modification of labor costs," id. at 893.

The Supreme Court has not yet had the occasion to decide whether *Bob's Big Boy* or *Otis Elevator* correctly applies *First National Maintenance* and the duty to bargain established by the NLRA; indeed, that question has not yet been presented to a single appeals court. Accordingly, the law in this area is unsettled and volatile.

It is not the purpose of H.R. 1122 to address this unresolved issue in any way. To the contrary, it is the Committee's view that the decision as to the proper reach of *First National Maintenance* and of the NLRA duty to bargain should be left to the courts and to the Labor Board to resolve in accordance with the usual processes of law, and it is the Committee's intent, in reporting this bill, to do just that. (See Section 206)

The purpose of the present legislation is to assure that whether or not a particular plant closing or mass layoff decision constitutes a mandatory subject of bargaining under the NLRA, there at least will be a consultative process before the decision is finalized and implemented. The consultative process will allow a good faith and thorough exploration of any and all mutually acceptable alternatives to the closing or mass layoff, but will not unduly interfere with whatever entrepreneurial prerogatives the employer enjoys.

The duty to consult under this bill thus differs from the duty to bargain under the NLRA in that consultation is a time-limited process; so long as the employer has consulted in good faith, the employer is not required to continue the process beyond the statutory period and is free to act unilaterally at that time, even if the

consultation process is still proceeding. In addition, the instant bill does not itself grant a right to engage in concerted activities to exact concessions during the consultation process; the lawfulness of any such economic pressure will continue to be governed exclusively by the NLRA and the Railway Labor Act. Finally, this bill provides remedies for breaches of the duty to consult that differ from those available under the NLRA for breaches of the duty to bargain.

Nonetheless, there are a number of important similarities between the duty to consult and the NLRA duty to bargain. Like the bargaining obligation, the duty to consult requires the employer to meet with the union, without preconditions, "at reasonable times" and as often necessary to conduct a thorough exploration of alternatives, and the employer must be represented by one who has sufficient authority to conduct meaningful bargaining. Moreover, the duty to consult under H.R. 1122, like the duty to bargain under the NLRA, is not a duty to reach an agreement.

Most important of all, the employer must approach the consultative process with a good-faith willingness to explore the reasons for and possible alternatives to the proposed closing or mass layoffs.

PROVISIONS ON UNFORESEEABLE BUSINESS CIRCUMSTANCES

Critics of notification provisions contained in previous plant closing bills argued they were deficient because they did not take into account those situations where it would be impossible for an employer to provide the required notice. The Committee expects that, in the vast majority of situations, employers will be able to comply with the modest notification requirement embodied in H.R. 1122. Nonetheless, in response to earlier concerns, Section 202(c) of the bill would permit a reduction or elimination of the notification period if the employer is confronted by "unavoidable business circumstances." Aside from the obvious situations which would qualify under this exception, such as a natural disaster which destroys a plant, the following fact patterns further illustrate the Committee's intent regarding this clause.

Company X, a men's apparel manufacturer, contracts with Company Y to supply a line of men's clothing. This relationship continues for a number of years, with Company Y serving as Company X's principal customer. At no time was there any indication that Company Y was dissatisfied with the product. Yet, for various internal and market factors, Company Y notifies Company X that, effective immediately, it is severing its contractual relationship. Notified of this change, financial institutions supporting Company X move immediately, to suspend all credit and recall outstanding loans. Confronted with the loss of its principal source of income and financing, Company X is forced to close its plant. Company X will not be able to replace its primary source of income, necessitating relatively swift implementation of the decision to close. These facts, presenting the employer with an unforeseeable loss of its principal source of income and credit, typify the type of "unforeseeable business circumstances" that would justify a relaxation or elimination of the notification requirement.

This set of circumstances should be contrasted with the following circumstances. An employer operating a sawmill determines that it must close due to an insufficient supply of timber in the surrounding area. Although, the availability of a limited natural resource is clearly beyond the control of either party, these circumstances could reasonably be foreseen and do not present the kind of exigent circumstances that require immediate implementation of a closing decision. Instead, this is the very kind of situation where the Committee believes that advance notification would provide an opportunity to explore alternatives or, if the closing is unavoidable, provide employees with a period for adjustment.

It should be noted that the initial determination of whether "unforeseeable business circumstances" exist rests with the employer. Management's decision to reduce or eliminate the required notification period, however, would be subject to judicial review if challenged under the procedures allowed under the legislation. In any hearing weighing the appropriateness of that decision, the burden will be on the employer to rebut a presumption in favor of compliance with the notification mandated by the bill. This burden seems appropriately placed, in the Committee's view, since the employer possesses the information upon which the decision was based and is, therefore, in the best position to justify the "unforeseeable business circumstances" determination.

THE DUTY TO DISCLOSE INFORMATION DURING CONSULTATION

Section 204 provides major protections for employees and employers in connection with the consultation requirements of Section 203. Section 204(a) requires an employer to furnish relevant information concerning its plant closing decision to employee representatives. Section 204(b) protects employers from public disclosure, or disclosure to parties other than employee representatives of trade secrets or other confidential information. For the consultation required in Section 203 to be meaningful and productive, employee representatives must have adequate information to understand and intelligently discuss issues surrounding a plant closing or mass layoff proposal. Nothing in H.R. 1122 would force an employer to reverse a plant closing proposal, but it would compel an open, cooperative exploration of alternatives.

It is well settled in the collective bargaining context that upon request employers have an obligation to furnish relevant information to employee representatives during contract negotiations (*NLRB* v. *Truitt Manufacturing Co.,* 351 U.S. 149 (1956)) and during the term of a collective bargaining agreement (*NLRB* v. *Acme Industrial Co.,* 385 U.S. 432 (1967)). Failure to provide such information is an unfair labor practice subject to Board remedies and injunctive relief.

The duty to provide information under section 8(a)(5) of the National Labor Relations Act has been broadly applied by the NLRB and the courts. The standard for assessing relevancy has been defined as a liberal discovery-type standard, where relevance is simply synonymous with germaneness. The information need only have some bearing on the issues involved, and the employer must

furnish information that is of probable or potential relevance to the employee representatives' role as bargaining agent.

The Committee intends that similar standards for invoking the duty to provide information in bargaining and during the term of a contract shall apply to the consultative process of H.R. 1122. But the duty to provide information shall attach to all decisions as to which there is a duty to consult under this bill, regardless of whether the decision would or would not constitute a mandatory subject to bargaining under the NLRA—a question as to which, as previously explained, the Committee expresses no view. In particular, under the bill, there would be a duty to consult, and to provide information with respect to a proposed plant closing or mass layoff decision, without regard to whether that decision "turns upon" labor costs; this is in contrast to the rule currently applied by the NLRB in defining the duty to bargain (under the NLRA). See *Otis Elevator,* 269 NLRB No. 162 (1982).

Difficult questions concerning relevance and necessity have often arisen under the NLRA when information concerns non-bargaining unit employees or locations. The courts and the NLRB have decided such cases on their own unique facts instead of applying the liberal rule; demands for information on non-unit employees and workplaces have been both sustained and rejected.

The Committee intends that for the purpose of H.R. 1122 the same broad discovery-type standard that applies to wage and benefit and financial information should apply to information regarding non-bargaining unit employees and locations and to third party employers where appropriate. Since H.R. 1122 is designed to have employers and employee representatives "put their heads together" instead of "knocking heads," the fullest disclosure of relevant information is desired so there can be a thorough evaluation of any alternatives.

For the consultation process to be meaningful, relevant information must be furnished as quickly as possible in a manner and form susceptible to rapid understanding and use. Time pressures do not permit a lengthy analysis of stacks of computer-generated data, so summaries or interpretations of data available to the employer in formulating its plant closing proposal must be furnished to employee representatives.

Section 204(b), which is modeled after similar provisions in section 1113(d)(3) of the Bankruptcy Amendments of 1984, authorizes the Secretary of Labor to issue protective order, on petition by the employer, to prevent public disclosure of information which could compromise the competitive position of the employer. Trade secrets, sensitive financial data and other confidential information furnished to the employee representatives under Section 204(a) should not be divulged outside the consultation process. In a bargaining context, the Board has ordered employers and employee representatives to negotiate the conditions of the provision of confidential information—for example how it shall be used, who shall have access to it, and restrictions on copies.

The Committee intends that since time is of the essence in the consultation process set out in Section 203, the questions of confidentiality and protection against public disclosure of confidential information should be decided quickly by the Secretary after per-

mitting a response by the employee representative to the employer's petition.

REQUIREMENTS OF HOUSE RULE XI, CLAUSE 2(l)(4)

The development of the need for this legislation and the Subcommittee's oversight findings are laid out in an earlier section of this report. The Committee has received no report on oversight findings on this subject from the Committee on Government Operations.

There follows a cost estimate submitted by the Congressional Budget Office with which the Committee agrees:

CONGRESSIONAL BUDGET OFFICE, COST ESTIMATE

1. Bill Number: H.R. 1122.
2. Bill title: Economic Dislocation and Worker Adjustment Assistance Act of 1987.
3. Bill status: As ordered reported from the House Education and Labor Committee, June 9, 1987.
4. Bill purpose: The purpose of this bill is to authorize a new Worker Adjustment Assistance program, and to further amend the Job Training Partnership Act.
5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1988	1989	1990	1991	1992
Worker readjustment assistance:					
Estimated authorization	770	812	858	907	956
Estimated outlays	26	631	827	853	901
State job banks:					
Estimated authorization	50	52	54	57	59
Estimated outlays	10	50	52	55	57
Displace farmers and ranchers:					
Estimated authorization	5	2	2	2	2
Estimated outlays	5	2	2	2	2
Internationally recognized worker's rights study:					
Estimated authorization	5	5	5	5	5
Estimated outlays	4	5	5	5	5
Total:					
Estimated authorization	830	871	919	971	1022
Estimated outlays	45	688	886	915	965

Costs of this bill would fall within function 500.

Basis of estimate: Sections 101 through 104 of H.R. 1122 would amend the Job Training Partnership Act (JTPA) to replace the current Dislocated Worker program with a new comprehensive program for dislocated workers entitled Worker Readjustment. The new program would consist of rapid response adjustment services, training, supportive services, and demonstration programs. The bill would authorize $980 million in 1988 for the Worker Readjustment program. The existing Dislocated Worker program in JTPA is permanently authorized at such sums as may be necessary and is estimated in the CBO baseline at approximately $210 million. The additional amount authorized by this bill is estimated to be $770 mil-

lion in 1988. The estimated authorization levels for 1989 through 1992 are the 1988 levels adjusted for inflation.

Thirty percent of the authorization would be used to fund the development of state plans and systems for delivering services and short term assistance to workers in need of readjustment. States would be required to develop systems to insure that eligible participants in programs are provided with services. States would also provide for basic readjustment services and activities, emphasizing early readjustment, outreach, counseling and assessment. The money would be allocated based on the relative number of unemployed workers in states just as it is currently allocated under the existing program.

Half of the Readjustment program authorization would go to states to provide long term adjustment assistance and training to eligible workers. Most of the money would go to workers in the form of vouchers to be used for independent training programs of up to 2 years in length. Up to 30 percent of the funds may be spent on supportive services and cash benefits to workers who entered training early and who have exhausted their unemployment benefits. The money would be made available to states at 167 percent of the rapid readjustment allocation.

This bill would also provide funds for the Secretary of Labor to establish specific projects in the event of a mass layoff or for demonstration projects. Amounts appropriated under this section may also be used for worker readjustment training in the event of an emergency in a particular state or industry. Specific demonstration projects named in the bill include a loan demonstration, a public works demonstration and a project designed to improve aid for dislocated farmers and ranchers.

In addition to the Worker Readjustment Program, the bill would make some changes to the Job Training Partnership Act. One section of the bill would require states to develop and maintain a computerized jobs bank system in each state. The project would be funded through the United States Employment Service and would provide information on job openings, occupational supply and demand and would be compatible with systems used in the administration of employment and training programs. The bill authorizes $50 million in 1988 and such sums as may be necessary for each succeeding fiscal year for computerized job banks.

In addition, the Secretary of Labor, in cooperation with the Secretary of Agriculture, would be required to collect data on the permanent dislocation of workers due to farm and ranch failures and to publish an annual report based in this data. Currently the Department of Labor (DOL) maintains a data base on unemployed and dislocated workers made up of unemployment insurance administrative records. Farmers, however, are not well represented in this survey since only farmers with 10 or more employees must file such records. Gathering information on farmers would involve designing and developing a new sampling frame that would include a sufficient number of small farms to provide reliable employment information of farmers as a whole. CBO estimates that developing a sampling frame in cooperation with the Department of Agriculture and issuing a report could cost up to $5 million in 1988 and $2

million per year thereafter. The Department of Labor is currently researching the requirements of such a study.

Title II of the bill would require employers to give advance notification of plant closings and mass layoffs to employees and to state and local governments. The length of notice required would vary with the number of employees losing jobs. This section of the bill would have no federal cost.

The estimates assume full appropriation of authorized levels at the beginning of each year and, based on conversations with Committee staff, assume the funds would be appropriated on a forward funding basis. Estimated outlays, therefore, reflect the spending pattern of current forward funded programs.

6. Estimated cost to State and local government: The changes to the Job Training Partnership Act are not expected to affect state and local budgets. The bill would require states to establish better systems for assisting and training dislocated workers but allows certain percentages of the authorized amounts to be spent on these activities.

7. Estimate comparison: On April 6, 1987 and May 28, 1987 CBO prepared cost estimates for H.R. 3 Title V, and S. 538, respectively, which contained similar language.

8. Previous CBO estimate: None.

9. Estimate prepared by: Michael Pogue.

10. Estimate approved by: C. G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

SECTION-BY-SECTION ANALYSIS

Section 1, short title

Section 1 provides that this Act may be cited as the "Economic Dislocation and Worker Adjustment Assistance Act".

TITLE I—WORKER READJUSTMENT

Section 101, amendment to Title III of the Job Training Partnership Act

Section 101(a) provides that Title III of the Job Training Partnership Act is amended as follows:

TITLE III—WORKER READJUSTMENT

Part A—General Provisions

Sec. 301. Short title

This section sets forth the short title of title III of the Job Training Partnership Act (JTPA) as the "Worker Readjustment Act."

Sec. 302. Authorization of Appropriations

The sum of $980,000,000 is authorized to be appropriated to carry out this title for fiscal year 1988 and such sums as may be necessary for each succeeding fiscal year.

From the amount appropriated, 30 percent shall be available to carry out parts B and C; 50 percent shall be available to carry out part D; and 20 percent shall be available to carry out part E.

Sec. 303. Definitions

This section sets forth the definition of the term "eligible dislocated worker." It also defines the terms "basic readjustment services," "dislocation event," "early readjustment assistance," "grant recipient," "joint labor-management committees," "local elected official," "recipient," "retraining services," "service provider," "substate area," and "substate grantee."

Part B—Service Delivery System and Basic Program Requirements.

Sec. 311. Worker Readjustment Agreements

In order to be allotted funds under parts B, C, and D of this title, the Governor of each State must enter into a worker readjustment agreement with the Secretary of Labor prior to each fiscal year.

Sec. 312. State worker readjustment councils

The Governor of each State shall establish a State worker readjustment council composed equally of representatives of labor, management, and public and private nonprofit organizations, agencies, and instrumentalities. This section also specifies their responsibilities.

Sec. 313. State plans

This section provides that the Governor of each State shall submit to the Secretary an annual plan with performance standards and set forth specified assurance and a description of methods to be employed in carrying out certain requirements.

Sec. 314. State services and activities

This section requires that each State shall designate an identifiable State dislocated worker unit or office, with the capability to respond rapidly to mass dislocation events throughout the State, and ensure the capability to respond to dislocation events in sparsely populated areas.

The dislocation worker unit must include specialists with responsibility for establishing on-site contact with employer and employee representatives shortly after becoming aware of dislocation events. They will also be responsible for promoting the formation of labor-management committees and will carry out information and technical assistance responsibilities.

The capability to respond to dislocation events in sparsely populated substate areas may include outreach mechanisms and regional centers.

Sec. 315. Designation of substate areas

This section provides that the Governor of each State shall designate substate areas (after receiving any recommendations from the

State worker readjustment council.) All Service Delivery Areas (SDAs) designated for purposes of Title II of the Job Training Partnership Act must be included within some substate area.

Any such SDA with a population of at least 200,000 shall be so designated. Any two or more contiguous service delivery areas with a total population of 200,000 or more may request designation. The rural concentrated employment programs under JTPA shall be designated.

Sec. 316. Substate grantees

A substance grantee shall be designated for each substate area in accordance with an agreement between the Governor, the local elected official or officials of such area, and the private industry council or councils of such area. If agreement is not reached, the Governor shall select the substate grantee.

Sec. 317. Substate plan

A substate grantee shall submit a substate plan to the Governor for approval. The governor shall consider the recommendations of the State worker readjustment council in making his decison regarding approval of a substate plan.

Sec. 318. Approved training

Participation by any individual in any of the programs authorized in this title shall be deemed to be acceptance of training with the approval of the State within the meaning of any other provision of federal law relating to unemployment benefits.

Part C—Basic Readjustment Services

Sec. 331. Expenditures for basic program

Governors and substate grantees are authorized to expend amounts under this part in accordance with the substate plan.

Sec. 332. Allotment of funds for basic services

This section provides that the Secretary of Labor shall allot amounts appropriated to carry out part B and this part as follows: one-third on the basis of number of unemployed individuals, one-third on the basis of number of unemployed individuals in excess of 4.5 percent, one-third on the basis of number of individuals who have been unemployed for fifteen weeks or more.

As soon as mass lay-off data and farmer-rancher dislocations data, respectively, becomes available they must be incorporated as an additional factor equal to the other factors (25 percent for each factor).

The Governor may retain 10 percent for State-level administration, staff for the State worker readjustment council, technical assistance, coordination, and the conduct of rapid response activities.

An additional amount not to exceed 10 percent may be used at the discretion of the Governor.

The remainder of the State funds shall be allotted by the Governor on an allocation formula prescribed by the Governor. The in-

formation the Governor shall use to develop the formula may include: insured unemployment data, unemployment concentrations, plant closing and mass lay-off data, declining industries data, farmer-rancher economic hardship data, and long-term unemployment data.

Sec. 333. Allowable Basic Readjustment Services and Activities

This section sets forth basic readjustment services and activities authorized under this part.

Sec. 334. Supportive services and benefits

This section authorizes the substate grantee to provide appropriate supportive services to participants.

Sec. 335. Cost limitations

No more than 15 percent of the amounts expended annually under this part by any substate grantee may be expended for administrative costs.

No more than 15 percent of the amounts expended annually under this part by any substate grantee may be expended for supportive services.

Sec. 336. Reallotment; reallocation

This section provides that the Governor may reallocate part C basic grant funds through voluntary transfers, or the mutual agreement of the Governor and the substate grantees, whenever the Governor determines that minimum expenditure levels approved in substate plans will not be achieved prior to the end to each program year.

Part D—Worker Readjustment Training Program

Sec. 341. Expenditures for worker readjustment training

This section provides that Governors and substate grantees are authorized to expend amounts made available by the Secretary of Labor under this part in accordance with the provisions of the substate plan.

Sec. 342. Allotments of funds

The Secretary of Labor shall for each program year establish an annual availability target for each State equal to 1⅔ times the amount of the State's allotment under section 332(a).

The Governor shall establish procedures for making funds available in substate areas under this part.

Sec. 343. Cost limitations

Administrative costs under this part may not exceed 15 percent of any substate grantees annual expenditures.

Supportive services and benefits costs under this part may not exceed 30 percent of any substate grantees expenditures.

Sec. 344. Supportive services and benefits

A substate grantee may determine that in order to facilitate an individual's participation in the program, supportive services and benefits are necessary. The substate grantee is authorized to provide a weekly benefit for the period the participant is enrolled in retraining services after such participant exhausts all regular unemployment compensation. Needs-based payments may be provided by the substate grantee to participants not receiving such benefit payments.

Sec. 345. Allowable services and activities

This section authorizes each substate grantee to provide training services to eligible participants. Eligible readjustment training shall receive either retraining services, or a certificate of continuing eligibility. Training services are authorized to be provided through systems of individual certificates that permit participants to seek out and arrange their own training.

Part E—Federal Readjustment Programs

Sec. 351. Program authorized

This section provides funds for use at the Secretary's discretion.

Sec. 352. Allowable activities

Amounts appropriated for this part may be used in circumstances of mass layoffs, industry-wide projects, multistate projects, special projects with Indian tribal entities, special projects to address national or regional concerns, and demonstration projects. Not to exceed 5 percent of the funds under this part may be used for the purpose of providing staff training and technical assistance services.

Sec. 353. Proposals for financial assistance

The Secretary is authorized to use discretionary funds to provide services of the type described in parts C and D.

Sec. 102. Job banks

This section amends Title V of JTPA to provide to the U.S. Employment Service funds to develop computerized electronic data processing and telecommunications for the purpose of identifying job openings, referral, occupational demand and career information.

The sum of $50,000,000 is authorized to be appropriated to carry out this section for fiscal year 1988 and such sums as may be necessary for each succeeding fiscal year.

Sec. 103. Studies

This section provides that the Secretary of Labor shall, in coordination with the Secretary of Agriculture, develop data on dislocated farmers and ranchers.

A study shall be conducted by the National Commission for Employment Policy on research related to the provisions of this title.

This section further provides that the Secretary of Labor shall conduct a study to identify the extent to which countries recognize and enforce, and producers fail to comply with, internationally recognized workers rights. A biennial report is required to be submitted to Congress. Appropriations of $5,000,000 are authorized to be available to the Secretary of Labor to make contractual or other agreements for monitoring information on such compliance.

Sec. 104. Effective date

This title shall take effect on October 1, 1987, or upon the date of enactment. Amendments to title III of the Job Training Partnership Act shall be effective with respect to appropriations for fiscal year 1988 and succeeding fiscal years.

TITLE II—LABOR-MANAGEMENT NOTIFICATION AND CONSULTATION

Section 201, definitions

The term "employer" is defined as any business enterprise that employs 50 or more full-time employees. This definition excludes governmental entities and wholly owned governmental corporations but includes non-profit employers.

A "plant closing or mass layoff" would be an employment loss for 50 or more employees, excluding seasonal, temporary or part-time employees, of an employer at any site during any 30 day period, except as provided in section 205(d) of the bill. (Section 205(d) concerns multiple layoffs.)

"Representative" means an exclusive representative of employees as determined under the National Labor Relations Act or Railway Labor Act, or, where employees have not designated such an exclusive representative, a person elected by employees for the purpose of representing those employees in the consultation process provided by section 203.

"Affected employees" are those who have been employed by an employer for more than six months and who may reasonably be expected to experience an employment loss as a consequence of a proposed plant closing or mass layoff, but does not include terminated seasonal, temporary, or part-time employees.

"Employment loss" means (A) an employment termination, other than a discharge for cause; (B) a layoff of indefinite duration; (C) a layoff exceeding six months; or (D) a reduction in hours of work of more than 50 percent as compared to the preceding six-month period.

"Voluntary departure" is defined to include an employment termination that occurs when an employee declines an employment offer at a different location less than 25 miles from the original work site, but does not include an employment termination that occurs when an employee is offered but refuses a transfer to another location that is 25 miles or more from the original work site.

"Terminated seasonal or temporary employee" means an employee who is hired with notice of the seasonal or temporary duration of that job and who experiences an employment loss, provided the loss occurs only as contemplated by that notice.

"Terminated part-time employee" is an employee who, during the period of employment, worked an average of less than fifteen hours per week.

Section 202, notice required before plant closings and mass layoffs

Section 202(a) requires an employer to serve written notice to the representative or representatives of affected employees, or, where there is no representative, to each affected employee; to the State dislocated worker unit established under part B of title III of the Job Training Partnership Act; and to the chief elected official of the unit of general purpose local government within which the closing or layoff is to occur before engaging in a plant closing or mass layoff.

Section 202(b) requires that the notice provided pursuant to section 202(a) be provided 90 days in advance of the event if the proposed mass layoff or closing may reasonably be expected to involve not fewer than fifty nor more than 100 affected employees. If the mass layoff or plant closing will involve more than 100 but less than 500 affected employees, notice must be provided 120 days in advance of the event. If the mass layoff or plant closing will involve 500 or more affected employees, notice must be provided 180 days in advance of the event.

Section 202(c) provides an employer may engage in a mass layoff or plant closing prior to the expiration of the notice period required in subsection (b) if the mass layoff or plant closing is caused by business circumstances that were not reasonably foreseeable at the time notice would have been required pursuant to subsection (b).

Section 202(d) provides that an employer who orders a mass layoff or plant closing prior to the notice period required in subsection (b) will still be in compliance with section 202 if the employer provides pay and benefits to each affected employee in an amount equivalent to such amount as the affected employee would have received had the employer complied with subsection (b).

Section 203, consultation required before plant closings and mass layoffs

Section 203(a) provides that an employer may not order a plant closing or mass layoff unless, upon request, the employer meets at reasonable times with representatives of affected employees and of the unit of general purpose local government and consulted in good faith with such representatives concerning the proposed mass layoff or plant closing and alternatives or modifications to that proposal. The requirement to consult does not compel an employer to agree to a modification or alternative to the proposed mass layoff or plant closing.

Section 203(b) provides that the obligation to consult begins at the time the employer is obligated to provide notice pursuant to section 202 and ends at the end of the notice period, but provides that the consultation period may be ended earlier by mutual agreement of the employer, representatives of affected employees, and of the unit of general purpose local government.

Section 203(c) requires that each State dislocated worker unit establish expedited procedures for the selection of employee repre-

sentatives by employees not otherwise represented by a union for the purpose of engaging in consultation with the employer.

Section 204, duty to disclose information during consultation

Section 204(a) provides that an employer will not be deemed to have consulted in good faith pursuant to section 203 unless the employer has, upon request, provided the representatives of affected employees or the unit of general purpose local government with such relevant information as is necessary for the thorough evaluation of the proposal to order a mass layoff or plant closing or for the thorough evaluation of alternatives or modifications to such a proposal.

Relevant information includes:

(A) the reasons and basis for the decision to order the mass layoff or plant closing;

(B) alternatives considered and the reasons for their rejection;

(C) plans with respect to relocating the work of the facility where employment loss is to occur;

(D) plans with respect to the disposition of capital assets;

(E) estimates of anticipated closing costs; and

(F) with respect to a proposed plant closing, an inventory of machinery and other equipment at the facility at the time of notice of the proposal.

Section 204(b) provides that the Secretary of Labor, on petition by the employer, may issue protective orders to prevent the disclosure of such information required pursuant to this section by representatives of affected employees or any employee which could compromise the position of the employer with respect to its competitors.

Section 205, administration and enforcement of requirements

Section 205(a) provides that an employer who orders a plant closing or mass layoff in violation of section 202 or section 203 by failing to notify or consult with affected employees or their representatives shall be liable to each employee suffering an employment loss as a result of that order (other than a terminated seasonal or temporary employee or a terminated part-time employee) for:

(A) back pay for each day of violation equal to not less than the higher of the average daily rate of compensation received by such employee during the previous three years of the employee's employment or the final regular daily rate received by such employee; and

(B) the cost of related benefits, including the cost of medical expenses incurred during the employment loss which would have been covered under medical benefits if the employment loss had not occurred.

A person seeking to enforce such liability (including a representative of employees) may sue for himself and/or for other persons similarly situated in any district court of the United States for any district in which the violation is alleged to have occurred, or in which the employer transacts business. In any such suit, the court may allow a reasonable attorneys' fee together with the costs of the

action to be paid by the defendant in addition to any judgment awarded the plaintiff or plaintiffs.

Section 205(b) provides that an employer who orders a plant closing or mass layoff and fails to notify the State dislocated worker unit or to notify and/or consult with the representative of the unit of general purpose local government in violation of section 202 or section 203 shall be liable to such State dislocated worker unit or such unit of general purpose local government for an amount equal to $500 for each day of violation. The unit seeking to enforce such liability may file suit in any district court of the United States for any district in which the violation is alleged to have occurred or in which the employer transacts business and the court may allow reasonable attorneys' fee together with the cost of the action to be paid by the defendant in addition to any judgment awarded the plaintiff or plaintiffs.

Section 205(c) provides that an employee or any representative of affected employees or of any unit of general purpose local government who violates a protective order issued under section 204(b) shall be liable to the employer for the financial loss sufferd by the employer as a result of the violation. Action to recover such liability may be maintained in any United States court of competent jurisdiction and the court may allow reasonable attorneys' fee together with the costs of the action to be paid by the defendant in addition to any judgment awarded the employer.

Section 205(d) provides that employment losses at a particular site for two or more groups of less than fifty employees occurring within any 90-day period and which aggregate fifty or more employees shall be considered to be a plant closing or mass layoff unless the employer demonstrates that the employment losses are the result of separate and distinct actions and causes and are not an attempt to evade the requirements of this title.

Section 205(e) provides that the remedies provided in this section are the exclusive remedies for any violation of this title.

Section 206, procedures in addition to other rights of employees

Section 206 provides that the rights and remedies provided in this title are in addition to, and not in lieu of, any other contractual, statutory, or other legal rights and remedies of employees, their representatives, and units of general purpose local government.

Section 207, procedures encouraged where not required

Section 207 provides that it is the sense of Congress that an employer who is not required to comply with the notice and consultation requirements of this title should, to the extent possible, provide notice to, consult with, and disclose information to its employees and the unit of general local government about a proposal to close a plant or permanently reduce its workforce.

Section 208, effective date

Section 208 provides that this title shall take effect on the date which is six months after the date of the enactment of this Act.

DISSENTING VIEWS

We oppose H.R. 1122 as reported. We emphasize, however, that we are strongly in support of the new Worker Dislocation Program contained in Part A of the bill. A discussion of our views on this program is included in the Committee Report on H.R. 3, the Omnibus Trade Bill, House Report 100–40, Part 5. Regarding the notice issue, while we agree that there is a need for sensible legislation requiring employers to give their employees advance notice before they are permenently laid off, we also believe that the requirements contained in H.R. 1122 are far too onerous for business and would not be feasible in many situations. Finally, we are completely opposed to the third major provision contained in the bill—the consultation and information sharing requirements.

There is no doubt that the economy today is in a state of great change. Such rapid change is certainly necessary in today's highly competitive global economy. A byproduct of that change, however, is the unemployment and dislocation of a large number of American workers. At the same time the economy has generated a large number of new jobs, some areas of the economy are experiencing permanent layoffs of large groups of people, with some businesses closing entirely. Corporate mergers and takeover threats are also resulting in large numbers of layoffs. These layoffs do not fit the traditional pattern of episodic, short-term layoffs of blue collar workers, but represent the permanent loss of a job, often affecting white collar workers as well. According to the Bureau of Labor Statistics, the jobs of nearly eleven million adults were abolished in the five-year period between 1981 and 1986. Although two thirds of the workers whose jobs were abolished during this period obtained other employment, this still leaves a significant group who remain unemployed for lengthy periods. Worker dislocation will continue to be an economic fact of life. It is truly a national problem which deserves Congressional attention.

The ever-increasing change in the American economy, in turn, requires increasing flexibility and change on the part of American workers. Wo do not believe it is fair to place the entire burden of responding to this challenge on each individual dislocated worker to form his or her own solution to the unemployment caused by structural change. Thus, although we do not support H.R. 1122, we do support the implementation of the new Worker Dislocation Program and the implementation of a reasonable notification requirement before permenant layoffs of large groups of employees.

Part C of H.R. 1122 would place onerous requirements on employers both to give lengthy periods of notification before closing or laying off workers and to consult with worker representatives regarding alternatives to layoff or closing. We will discuss those issues separately.

NOTIFICATION

This is not the first time Congress has considered a plant closing bill requiring notification and consultation. In November of 1985, the House rejected H.R. 1616, which, in final form, would have required 90 days notice before layoff. Some of us were concerned that consideration of the bill might have been premature at that time because existing knowledge of the worker dislocation issue was insufficient. Therefore, Reps. Jeffords, Roukema, and Gunderson requested that the Secretary of Labor set up a task force to study the problem and report back to Congress within one year. In October of 1985, the Secretary of Labor's Task Force on Economic Adjustment and Worker Dislocation, composed of representatives from business, labor, and academia, was formed. The Task Force issued a comprehensive report on the displaced worker problem in January of this year. We believe that the Task Force has done an outstanding job of outlining the issue before us and suggesting ways to assist dislocated workers.

In addition to having the benefit of the Task Force Report, we also have the benefit of several other important studies released since we voted on plant closing legislation in 1985. The Congressional Office of Technology Assessment, the General Accounting Office, and the Panel on Technology and Employment of the National Academy of Sciences and National Academy of Engineering have issued comprehensive reports on worker dislocation.

We know now that a full two-thirds of workers who permanently lose their jobs receive very little or no advance notice before termination (April 1987 GAO Report on Plant Closings). Of employers with at least 100 employees, one-third give less than two weeks notice and another third give no notice whatsoever. The median notice period received is only 14 days for white collar workers and 7 days for blue collar workers, with non-union blue collar workers receiving an average of only two days notice. These figures clearly show that voluntary notice is either not being given at all or is so short as to be of no real help to workers. Therefore, even though we would all prefer voluntary notice, we have come to the conclusion that it is time for Congress to enact a reasonable notice requirement.

One of the most important reasons for coming to this conclusion is the widespread agreement that giving employees advance notice about the impending loss of their jobs is necessary for an effective worker readjustment program. All of the above listed studies of the worker dislocation and notice issues have emphasized that advance notice is always preferable to no notice. Thus, even though the Secretary's Task Force could not agree on the question of whether a notice period should be legislated, it did conclude that advance notification is "good employer practice" and "an essential component of a successful adjustment program." The Office of Technology Assessment Report, the Conference Board report, and the report on Technology and Employment similarly concluded that advance notice is essential to worker readjustment.

Early notice is important for several reasons. First and foremost, there is much greater participation in worker readjustment programs when readjustment efforts are begun at the workplace

before the layoff actually takes place. Both the American experience under the Job Training Partnership Act and the Canadian experience with on-site labor-management committees show that it is far easier to make and maintain contact with employees before their jobs have actually ended and they begin to scatter. Furthermore, advance notice results in employees, on the average, finding alternative employment faster, which, due to lower unemployment costs, saves both the government and employers money. Studies have shown that giving notice to employees before permanent layoff reduces the average duration of unemployment by about four weeks. In short, without the enactment of a corresponding notice requirement, the effectiveness of the $980 million Dislocated Worker Program proposed in H.R. 1212 would be greatly reduced.

The enactment of a mandated notice period has been vehemently opposed by business, however. Employers believe that a notice requirement would result in such negative consequences as the loss of credit and customers, reduced productivity on the part of employees, and employee sabotage. To date, there has been no substantiation that these things occur after advance notice. Both the Office of Technology Assessment Report and the Task Force Report state that they did not find evidence that such consequences result either in this country when voluntary notice is given or in other countries where notice is given pursuant to a legal requirement. According to the Task Force, "Many of the fears regarding advance notification have not been realized in practice." To the contrary, with regard to the effect on employee behavior, reports indicate that productivity actually increases after notice is given, and sabotage seems to be nonexistent. We do not believe that the legislation of a notice standard should be resisted on the basis of speculation about what negative consequences could result when all indications are to the contrary.

We stress, however, that because we are also concerned with maintaining adequate flexibility for business, we oppose H.R. 1122 as placing far too onerous a burden on business. H.R. 1122 would require from three to six months notice in cases of not only closings and large layoffs, but also indefinite layoffs and certain reductions in working hours. It even covers part-time workers who work as few as 15 hours per week. Testimony provided at a hearing this year clearly showed that employers often do not know such a long time in advance that they will have to lay off employees. We in Congress must realize that business conditions are much more fluid than is acknowledged in this bill. Employers simply do not always know three to six months in advance that they will have to lay off people, much less which and how many employees will be affected. Fluctuation in customer demand, as well as other market factors like the availability of supplies, is just not predictable to this extent. We must recognize practical constraints such as these which can prevent employers from having the ability to give notice before enacting any across-the-board requirements.

Because of such concerns, we support the implementation of a reasonable notice requirement along the lines of the minority substitute offered by Rep. Roukema in Committee. This substitute would have required employers to provide 60 days notice when at least 50 employees are terminated or laid off for more than six

months. Part-time and seasonal employees and those who had worked for the employer for less than one year would be excluded. Employers would be exempt from the notice requirement if there were "unforeseen business circumstances," such as loss of contract, fluctuation in customer demand, fire, flood, or any act of God, preventing them from giving notice. Further, so as not to inhibit potential employers from taking the risk of starting a new business, any business which has been in operation for less than five years would be exempt. An approach such as this would provide workers with the notice they need in order to make an effective search for alternative employment, while still providing sufficient flexibility for employers.

In short, we believe that the time has come for Congress to enact reasonable legislation requiring employers to provide advance notice of impending layoffs and business closings. Notice not only greatly enhances worker readjustment, but it is a decent and humane way to treat those people who have invested their labor in a company over the years. We emphasize that it is the length of the notice period required which is the most important issue. We consider the Senate Trade bill's provision requiring 60 days notice for employers with at least 100 employees to be an acceptable one.

CONSULTATION

We are unalterably opposed to the enactment of any corresponding consultation or information sharing requirement. H.R. 1122 requires employers, upon the giving of notice, to "meet at reasonable times" with employee representatives and local government officials and consult "in good faith" concerning the proposed closing or layoff and any alternatives or modifications to the proposal. Employers must also disclose information to employee representatives and the local government on the reasons for the closing, alternatives considered, any relocation plans, plans for the disposition of capital, anticipated closing costs, and remaining machinery and equipment. The penalty for violating the consultation requirement is back pay and benefits for each employee, attorneys' fees, as well as $500 per day of violation paid to the local government.

Consultation only works if it is voluntary, if the employer has the resources to save the business, and if the parties truly wish to do so. No one wants businesses to close down, and it is certainly true that consultation has saved a few plants. But in none of those cases was the employer under a legal requirement to engage in consultation. The voluntary consultation occurring in those instances can and certainly should continue, and would likely be stimulated anyway by the advance notice requirement. It is both unnecessary and counterproductive to require it.

Moreover, the consequence of this consultation requirement will only be lengthy litigation over whether or not the employer consulted according to the bill's requirements. In the vast majority of cases, consultation will not keep the plant open. Management will generally do everything in its power to keep from closing, regardless of any legal requirement. Such decisions are only made after business conditions have gone past the point of saving the business. Forcing consultation in such situations will do nothing more than

require struggling or defunct employers to sit in fruitless negotating meetings and defend endless lawsuits.

The bill requires parties to consult in good faith. This requirement is an inherently nebulous one which will depend on the facts of each individual case. There will be litigation over the consultation requirement every time a layoff is not prevented. Although it is a necessary component of the law on collective bargaining, experience under the National Labor Relations Act's requirement of "bargaining in good faith" has demonstrated that it is extremely difficult to predict whether a court will determine that a party is violating such a requirement. Yet the penalty for failure to consult in good faith or disclose information is back pay for all affected employees—even if the employees got the full notice—as well as another $500 per day to the state dislocated worker unit or local government. This is a completely unrealistic and punitive penalty for a requirement with such vague contours.

One important problem with a consultation requirement, which has been pointed out by the Office of Technology Assessment Report, is that it can actually prove harmful to employees by giving them false hope that they will not be laid off after all. A natural human reaction is to wait and see what happens to one's employer rather than start looking for a new job. Workers would be better served by a simple notice requirement making them face the inevitable, along with assistance in finding new jobs.

We note, finally, that the House rejected a consultation requirement in 1985. This proposed requirement has—for good reason as outlined above—always been the most controversial provision of plant closing legislation, and we see no need to dwell upon the issue again.

CONCLUSION

In sum, we are opposed to H.R. 1122, as amended, because it would place far too onerous notice requirements and unrealistic and counterproductive consultation and information sharing requirements on employers. We nevertheless firmly believe that it is time for Congress to legislate a reasonable advance notice requirement, not only because it will enhance worker readjustment, but because it is the decent and humane way to treat those long-term workers who lose their jobs through no fault of their own.

JIM JEFFORDS.
MARGE ROUKEMA.
STEVE GUNDERSON.

SEPARATE DISSENTING VIEWS ON H.R. 1122

Although we generally support the Disclocated Worker provisions in Title I of H.R. 1122 (subject to the Additional Views some of us expressed in the Committee Report on H.R. 3, H. Rept. 100-40, Part 5), we strongly oppose the Labor-Management Notification and Consultation requirements in Title II. These provisions, which were rejected by the House in the last Congress, would not only undermine the compelling goals of Title I, but would pose a serious threat to this country's ability to compete in the global marketplace.

The bill is schizophrenic—on the one hand it is aimed at retraining and re-employing workers who have learned that they are about to lose their jobs and on the other hand it is aimed at setting up artificial and futile barriers to the realities which dictate those job loses.

Ironically, the notice and consultation requirements in Title II will ensure an even larger need for the services provided under Title I. The ultimate result will be damage proliferation, rather than damage control.

While we will discuss concerns with the specifics of Title II, we must emphasize our opposition to its basic requirements, whatever their ultimate form. We do believe that a concerted effort on the part of management, labor and the government is needed to address the needs of dislocated workers. Labor-management cooperation in and of itself can have manifold accomplishments well beyond those amendable to any single government program. But to impose mandates in this area will only serve to polarize labor and management and poison the well for an effective worker readjustment system.

The case for imposing mandates relies largely upon statistics from GAO and elsewhere supposedly indicating a poor track record on the part of American businesses in providing advance notice of layoffs and closings. On their face, these statistics do indicate that there is considerable room for improvement from the perspective of affected workers.

But what is lacking from the statistics—which are based upon surveys of workers and employers—is any indication as to why employers give notice when they do. This legislation has always been premised on the notion that somehow businesses know long in advance of decisions to close but, for lack of concern for their workers' welfare, they still fail to provide notice and will only begin doing so if they are forced by law. There is absolutely no hard evidence to back up this assumption and the studies have failed to address this issue. Consequently, we have no way of knowing whether extended notice has, in fact, been given in the vast majority of those instances where the company knew well in advance of the certainty of closing or layoffs.

Even where such advance knowledge was present, the statistics don't tell us whether there were legitimate reasons for withholding notice, such as a well-founded fear of loss of credit and/or customers. Experienced business leaders know that circumstances sometimes dictate against providing lengthy notice, even by companies with the most exemplary employee relations. For this reason, the business representatives of the Secretary of Labor's Task Force on Economic Adjustment and Worker Dislocation would not agree to having a task force position on a notice mandate.

We find particularly offensive the use of findings of that task force to support this bill. Naturally, the task force found that advance notice is helpful to disclocated workers. It would be absurd to conclude otherwise. It is more significant, however, that the Task Force, unlike the sponsors of H.R. 1122, was able to draw a distinction between advance notice provided voluntarily, which all members of the task force endorsed, and that which is mandated by law, upon which the task force was unable to reach the requisite consensus.

To be sure, there were task force members who strongly support a notice mandate. But that mandate was just as strongly opposed by others who understood the practical implications of such a mandate. That understanding was founded upon their own experience in the business world, which was the very basis for their selection to serve on the task force.

Not only does the bill ignore the fact that the task force consensus does not include a notice mandate, but the bill goes even further to impose a requirement that wasn't even considered by the task force—i.e. good faith consultation.

At a time when it is most essential that labor and management work together to assist affected workers in a closing or layoff, the consultation requirement would create labor-management tension, raise the specter of costly litigation, and elevate false hopes among affected workers that their jobs might be saved.

Supporters of the bill point to situations where closings or layoffs were avoided through joint efforts of labor and management. It need only be noted that these situations arose where there was no gun at the head of management attempting to force a solution. Instead, what did exist was a combination of a healthy labor-management relationship and the availability of viable and practical alternatives which could be agreed upon. No law can force these conditions. By the same token, if these conditions exist, no law is necessary.

Moreover, the supporters of the bill fail to note that employers are already required, under the National Labor Relations Act, to negotiate with unions in layoff or closing situations where collective bargaining is useful. The effects of a layoff or closing must always be bargained over in good faith. In addition, decisions to move or subcontract work must be bargained over if the reasons for those decisions are amenable to the collective bargaining process.

The U.S. Supreme Court has considerd this issue and has issued a properly balanced guideline for these circumstances: "[I]n view of an employer's need for unencumbered decision-making, bargaining over management decisions that have a substantial impact on the

continued availability of employment should be required only if the benefit, for labor-maangement relations and the collective bargaining process, outweighs the burden placed on the conduct of the business." (*First National Maintenance Corp.* v. *NLRB,* 452 U.S. 666, 679 (1981). The NLRB has imposed this guideline in a strict fashion, as was made clear in two recent cases (*Century Air Freight, Inc.*, 284 NLRB No. 85, June 30, 1987, and *Arrow Automotive Industries, Inc.,* 284 NLRB No. 57, June 25, 1987) in which management was found in violation by failing to bargain in good faith before initiating layoffs.

While we are opposed in principle to the notice and the consultation requirements in any form, we feel compelled to point out a number of specific problems with the requirements of the bill.

Most noteworthy is the fact that it is not just a "plant closing" bill. Although virtually all of the testimony and case studies presented in support of the bill represent permanent shutdowns of large facilities, those shutdowns are only a small part of this bill. Virtually any layoff affecting more than 50 employees would be covered by this bill, unless the employer was absolutely certain that it would not extend beyond 6 months. In some industries, such temporary layoffs are commonplace and are addressed through collective bargaining agreements and employer policies designed to minimize the hardships imposed on the workers. At the same time, the workers recognize that temporary layoffs are a normal part of their job. To impose a notice requirement in such situations is the height of absurdity. Yet, one witness testified that, under the bill, the notice requirement would have been triggered 28 times in its five largest plants just during the first 6 months of 1986. The notice requirement would even be triggered where there is no job loss, but a reduction in hours among the employees. Is it really accurate to call this a "plant closing" bill?

The bill attempts to create an "out" for those who do not know in advance by creating an exemption or reduction in the notice period where "unforeseeable business circumstances" are involved. In the first place, one must recognize that this only serves as a potential exemption from the ultimate sanctions of the bill. The bill does not and can not exempt any business from being dragged into court every time more than 50 workers are laid off in order to explain to a judge with little or no understanding of business realities that there was no "reasonable" scenario under which the circumstances leading to the layoffs were foreseeable. Clearly, there would be easy cases, such as fires and natural disasters, but, to give just one example of a hard case, what if a major portion of a company's foreign business was affected by a sudden outbreak of war between two foreign countries? What if that war had been preceded by years of hostilities? Couldn't it be argued that the war was "reasonably foreseeable"? Such "hard cases" are likely to be the rule rather than the exception and one can only expect that workers and their unions would avail themselves of the bill's procedures and remedies in those instances.

Taken together, the notice and consultation requirements can only be viewed as a two-pronged tool to try to prevent plant closings and mass layoffs, rather than alleviate their effects. This flies

in the face of all empirical evidence regarding the framework necessary for successful dislocated worker programs.

The likely adverse effects of this bill on those programs were described best in the very OTA report cited favorably in the Committee Report ("Plant Closing: Advance Notice and Rapid Response", September 1986):

> Although there are instances where even quite brief advance notice of a closing has triggered labor-management efforts or community assistance that helped the plant to survive, this seems to avoid an infrequent occurrence. Possibly attempts to avoid a plant closing might have the untoward effect of undercutting efforts to find new jobs for displaced workers, by adding an element of uncertainty. Workers who have put in 15 or 20 years at a plant, and often have gone through several temporary layoffs, usually find it hard to believe that a plant is really closing. To first give notice and then search for alternatives to a closing or layoff might fortify the doubts.

The consensus of the Brock Task Force represented a major breakthrough on an issue historically characterized by trench warfare between labor and management. The Dislocated Worker program recommended by the Task Force called for a partnership between labor, industry and government to address the problem of dislocations resulting from a dynamic economy. Unfortunately, the preoccupation of the supporters of H.R. 1122 with an advance notice mandate has shattered the consensus forged by the task force members on this issue and, as such, threatens the partnership necessary for the success of the proposed program.

In addition to stating the necessity for public and private action to assit dislocated workers, the Brock Task Force recognized the harsh realities of today's global economy: "The permanent displacement of some jobs is an inevitable consequence of a dynamic world economy. Plant closings and permanent layoffs can reflect the strategic flexibility needed to keep the U.S. economy competitive and growing."

Title II of H.R. 1122 will legislate the same market rigidities that have stifled job growth in Western Europe. Imposing restrictions on the ability of business to react to changing economic conditions will impede competitiveness, as it has in the European Community. The tight restrictions on plant closings and layoffs imposed in this bill have already taken their toll in Europe. While the U.S. has created nearly 25 million net new jobs in the past dozen years, the EC has created absolutely no net new jobs. While unemployment in the U.S. is around 6.3 percent, joblessness in most West European countries remains at double digit levels. In summary, the principal effect of Title II of H.R. 1122 will be to drive many American jobs overseas, and throw more American workers out of work.

The Task Force recommended a constructive approach to worker dislocation problems. That approach avoided the divisive and inflexible mandates added by this bill. Our only hope is that our colleagues in the full House will be as realistic as the Brock Task Force and reject this obstructionist legislation.

STEVE BARTLETT.
TOM TAUKE.
DICK ARMEY.
HARRIS W. FAWELL.
PAUL B. HENRY.
CASS BALLENGER.

ADDITIONAL VIEWS OF REPRESENTATIVES FAWELL AND BALLENGER ON H.R. 1122

Title II of H.R. 1122 is mistakenly identified as merely requiring employers to give advance notice to workers for a "plant closing or mass layoff." We can assure our colleagues that H.R. 1122 is anything but a simple plant closing notice bill.

Title II defines a "plant closing or mass layoff" as an "employment loss" which aggregates in excess of 50 employees during any 90-day period. There are no restrictions on where these employment losses may occur. Thus, when an employment loss at any plant or business location aggregates more than 50 workers, the bill triggers significant obligations on the employer. The bill also requires notice when employee hours are reduced by more than fifty percent.

An employer could not order a layoff or reduction in hours until the end of a specified period (ranging from 90 to 180 days) and only after he serves written notice to: 1) the union representative of the affected employee (if there is no union representative, then to each affected employee); 2) the State dislocated worker unit; and 3) the chief elected official of the local government unit.

An obvious problem is that the layoff will usually occur over a period of time, possibly at two or more of the employer's business sites in various parts of the state, nation, or presumably, the world. Notice could not conceivably precede layoffs made prior to the one which triggers the 50-employee threshold. And when the layoff is made which reaches 50, the employer would now find himself retroactively in violation of all the preceding layoffs which occurred without prior notice. The employer would also find that he had violated the good faith collective bargaining required prior to a layoff.

Because the notice requirements pertain to small layoffs and reduced working hours, as well as part-time employees, the employer would have to be meticulously aware of every business decision made at all of his business locations, lest the total of layoffs exceed the 50-employee threshold.

Although Title II is labeled a plant closing notice, it is primarily aimed at taking away the right of employers to determine when they may terminate, lay off, or reduce the work hours of employees. The attitude conveyed by this legislation is that those rights should be shared with unions, local governments, state agencies and, of course, ultimately the Secretary of Labor and the federal courts if it is felt the employer erred in giving proper notice or failed to bargain in good faith.

For every day an employer is in violation of the notice and bargaining requirements, he is liable to each affected employee for back pay, including all job benefits. Furthermore, the employer is required to pay each State dislocated worker unit and each affected local government unit $500 per day for each day of violation.

No one likes employee terminations, layoffs, or reduced working hours. In a free market society, however, these are difficult decisions primarily shouldered by the employer, who often must make quick and painful decisions based on numerous economic realities in order to maintain production and stay in business.

HARRIS W. FAWELL.
CASS BALLENGER.

ADDITIONAL VIEWS OF REPRESENTATIVES BALLENGER, FAWELL, BARTLETT, AND ARMEY

The Brock Task Force recommended specific federal programs to assist displaced workers and get them back to work. Its recommendations included nothing on consultation and information disclosure in the event of a plant closing. Requiring employers to make public disclosure of large amounts of internal corporate information will not retrain workers or find them new jobs. It will delay the closing of business operations that no longer make economic sense.

Organized labor has developed a new tactic, called the "corporate campaign." This tactic attempts to bring pressure to bear on a company by seeking vulnerabilities in its economic and political relationships. In order to be successful in a corporate campaign, labor must obtain as much financial and operational information as possible about a target company. That is what consultation and information disclosure in H.R. 1122 is all about. Getting large amounts of internal company information out to the news media and then forcing the company to debate the union, local government and the media, and thus delaying or even preventing an action which is economically necessary.

The initiatives, like the Brock Task Force Recommendations, recognize the inevitability and the importance of economic change, while providing for meaningful assistance for those workers who may be adversely affected by such change. The consultation and information disclosure requirements in this legislation will be used to block change. No public policy is served by legislating them into law.

CASS BALLENGER.
DICK ARMEY.
HARRIS W. FAWELL.
STEVE BARTLETT.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

JOB TRAINING PARTNERSHIP ACT

* * * * * * *

[TITLE III—EMPLOYMENT AND TRAINING ASSISTANCE FOR DISLOCATED WORKERS

TITLE III—WORKER READJUSTMENT

PART A—GENERAL PROVISIONS

PART B—SERVICE DELIVERY SYSTEM AND BASIC PROGRAM REQUIREMENTS

PART C—BASIC READJUSTMENT SERVICES

PART D—WORKER READJUSTMENT TRAINING PROGRAM

[TITLE III—EMPLOYMENT AND TRAINING ASSISTANCE FOR DISLOCATED WORKERS

[ALLOCATION OF FUNDS

[SEC. 301. (a) From the amount appropriated to carry out this title for any fiscal year, the Secretary may reserve up to 25 percent of such amount for use by the States in accordance with subsection (c).

[(b) The Secretary shall allot the remainder of the amount appropriated to carry out this title for any fiscal year among the States as follows:

[(1) One-third of the remainder of such amount shall be allotted among the States on the basis of the relative number of unemployed individuals who reside in each State as compared to the total number of unemployed individuals in all the States.

[(2) One-third of the remainder of such amount shall be allotted among the States on the basis of the relative excess number of unemployed individuals who reside in each State as compared to the total excess number of unemployed individuals in all the States. For purposes of this paragraph, the term "excess number" means the number which represents unemployed individuals in excess of 4.5 percent of the civilian labor force in the State.

[(3) One-third of the remainder of such amount shall be allotted among the States on the basis of the relative number of individuals who have been unemployed for fifteen weeks or more and which reside in each State as compared to the total number of such individuals in all the States.

[(c) The Secretary shall make available the sums reserved under subsection (a) for the purpose of providing training, retraining, job search assistance, placement, relocation assistance, and other aid (including any activity authorized by section 303) to individuals who are affected by mass layoffs, natural disasters, Federal Government actions (such as relocations of Federal facilities), or who reside in areas of high unemployment or designated enterprise zones. In order to qualify for assistance from funds reserved by the Secretary under subsection (a), a State shall, in accordance with regulations promulgated by the Secretary establishing criteria for awarding assistance from such funds, submit an application identifying the need for such assistance and the types of, and projected

results expected from, activities to be conducted with such funds. Such criteria shall not include any requirement that, in order to receive assistance under this subsection, the State shall provide a matching amount with funds available from one or more other sources.

[(d) The Secretary is authorized to reallot any amount of any allotment to a State to the extent that the Secretary determines that the State will not be able to obligate such amount within one year of allotment.

[IDENTIFICATION OF DISLOCATED WORKERS

[SEC. 302. (a) Each State is authorized to establish procedures to identify substantial groups of eligile individuals who—

[(1) have been terminated or laid off or who have received a notice of termination or lay-off from employment, are eligible for or have exhausted their entitlement to unemployment compensation, and are unlikely to return to their previous industry or occupation;

[(2) have been terminated, or who have received a notice of termination of employment, as a result of any permanent closure of a plant or facility;

[(3) are long-term unemployed and have limited opportunities of employment or reemployment in the same or a similar occupation in the area in which such individuals reside, including any older individuals who may have substantial barriers to employment by reason of age, or

[(4) were self-employed (including farmers) and are unemployed as a result of general economic conditions in the community in which they reside or because of naturual disasters subject to the next sentence.

The Secretary shall establish categories of self-employed individuals and of economic conditions and natural disasters to which clause (4) of the preceding sentence applies.

[(b) The State may provide for the use of the private industry councils established under title I of this Act to assist in making the identification established under subsection (a).

[(c)(1) Whenever a group of eligible individuals is identified under subsection (a), the State, with the assistance of the private industry council, shall determine what, if any, job opportunities exist within the local labor market area or outside the labor market area for which such individuals could be retrained.

[(2) The State shall determine whether training opportunities for such employment opportunities exist or could be provided within the local market area.

[(3) A State may serve any eligible individual under this part without regard to the residence of such individual.

[(d) Whenever training opportunities pursuant to subsection (c) are identified, information concerning the opportunities shall be made available to the individuals. The acceptance of training for such opportunites shall be deemed to be acceptance of training with the approval of the State within the meaning of any other provision of Federal law relating to unemployment benefits.

[AUTHORIZED ACTIVITIES

[SEC. 303. (a) Financial assistance provided to States under this title may be used to assist eligible individuals to obtain unsubsidized employment through training and related employment services which may include, but are not limited to—

[(1) job search assistance, including job clubs,

[(2) job development,

[(3) training in jobs skills for which demand exceeds supply,

[(4) supportive services, including commuting assistance and financial and personal counseling,

[(5) pre-layoff assistance,

[(6) relocation assistance, and

[(7) programs conducted in cooperation with employers or labor organizations to provide early intervention in the event of closure of plants or facilities.

[(b) Relocation assistance may be provided if the State detrmines (1) that the individual cannot obtain employment within the individual's commuting area, and (2) that the individual has secured suitable long-duration employment or obtained a bona fide job offer in a reloation area in a State.

[MATCHING REQUIREMENT

[SEC. 304. (a)(1) In order to qualify for financial assistance under this title, a State shall demonstrate, to the satisfaction of the Secretary, that it will expand for purposes of services assisted under this title, an amount from public or private non-Federal sources equal to the amount made available to that State under section 301(b).

[(2) Whenever the average rate of unemployment for a State is higher than the average rate of unemployment for all States, the non-Federal matching funds described in paragraph (1) required to be provided by such State for that fiscal year shall be reduced by 10 percent for each 1 percent or portion thereof, by which the average rate of unemployment for that State is greater than the average rate of unemployment for all States.

[(3) The Secretary shall determine the average rate of unemployment for a State and the average rate of unemployment for all States for each fiscal year on the basis of the most recent twelve-month period prior to that fiscal year.

[(b)(1) Such non-Federal matching funds shall include the direct cost of employment or training services under this title provided by State or local programs (such as vocational education), private nonprofit organizations, or private for-profit employers.

[(2) Funds expended from a State fund to provide unemployment insurance benefits to an eligible individual for purposes of this title and who is enrolled in a program of training or retraining under this title may be credited for up to 50 percent of the funds required to be expended from non-Federal sources as required by this section.

[PROGRAM REVIEW

[SEC. 305. Except for programs of assistance operated on a statewide or industry-wide basis, no program of assistance conducted with funds made available under this title may be operated within

any service delivery area without a 30-day period for review and recommendation by the private industry council and appropriate chief elected official or officials for such area. The State shall consider for recommendation of such private industry council and chief elected official or officials before granting final approval of such program, and in the event final approval is granted contrary to such recommendation, the State shall provide the reasons therefor in writing to the appropriate private industry council and chief elected official or officials.

[CONSULTATION WITH LABOR ORGANIZATIONS

[SEC. 306. Any assistance program conducted with funds made available under this title which will provide services to a substantial number of members of a labor organization shall be established only after full consultation with such labor organization.

[LIMITATIONS

[SEC. 307. (a) Except as provided in subsection (b), there shall be available for supportive services, wages, allowances, stipends, and costs of administration, not more than 30 percent of the Federal funds available under this title in each State.

[(b) The funds to which the limitation described in subsection (a) applies shall not include the funds referred to in section 301(a). In no event shall such limitation apply to more than 50 percent of the total amount of Federal and non-Federal funds available to a program.

[STATE PLANS; COORDINATION WITH OTHER PROGRAMS

[SEC. 308. Any State which desires to receive financial assistance under this title shall submit to the Secretary a plan for the use of such assistance which shall include appropriate provisions for the coordination of programs conducted with such assistance, with low-income weatherization and other energy conservation programs, and social services, in accordance with the provisions of section 121.]

TITLE III—WORKER READJUSTMENT

PART A—GENERAL PROVISIONS

SHORT TITLE

SEC. 301. This title may be cited as the "Worker Readjustment Act".

AUTHORIZATION OF APPROPRIATIONS

SEC. 302. (a) AUTHORIZATION AMOUNT AND DURATION.—There are authorized to be appropriated to carry out this title $980,000,000 for fiscal year 1988 and such sums as may be necessary for each succeeding fiscal year.

(b) CARRY-OVER AUTHORITY.—Appropriations for any fiscal year may provide that amounts shall remain available for obligation during the succeeding fiscal year.

(c) ALLOCATION BETWEEN PROGRAMS.—From the amounts appropriated pursuant to subsection (a)—

(1) 30 percent shall be available to carry out parts B and C;

(2) 50 percent shall be available to carry out part D; and

(3) 20 percent shall be available to carry out part E.

DEFINITIONS

SEC. 303. (a) ELIGIBLE DISCLOCATED WORKERS.—(1) For purposes of this title, the term "eligible dislocated workers" means individuals who—

(A) have been terminated or laid off or who have received a notice of termination or layoff from employment, are eligible for or have exhausted their entitlement to unemployment compensation, and are unlikely to return to their previous industry or occupation;

(B) have been terminated or have received a notice of termination of employment, as a result of any permanent closure of or any substantial layoff at a plant, facility, or enterprise;

(C) are long-term unemployed and have limited opportunities for employment or reemployment in the same or a similar occupation in the area in which such individuals reside, including older individuals who may have substantial barriers to employment by reason of age; or

(D) were self-employed (including farmers and ranchers) and are unemployed as a result of general economic conditions in the community in which they reside or because of natural disasters, subject to regulations prescribed by the Secretary.

(2) Only eligible individuals described in paragraph (1) of this subsection are authorized to receive services under this title. Such services may not be denied on the basis of the residence of the individual.

(b) OTHER DEFINED TERMS.—For the purposes of this title—

(1) The term "basic readjustment services" means those services and activities specified in section 333.

(2) The term "dislocation event" means a plant closing, a mass layoff, or other layoffs of a permanent nature in which workers are not subject to recall or are otherwise unlikely to return to their previous positions. Such an event may include natural disasters which result, or are likely to result, in permanent loss of employment for workers. A "dislocation event" may also be the cessation, or the process of cessation, of self-employment with resulting loss of livelihood in operation of a business enterprise, including farming and ranching.

(3) The term "early readjustment assistance" means those basic readjustment services provided before, during, and immediately after a dislocation event. Such services ordinarily include one or more of the following: assessment of educational needs and abilities, and vocational interests and aptitudes; determination of occupational skills; provision of labor market information; counseling; job development; job search assistance; and job placement assistance.

(4) The term "grant recipient" means the Governor.

(5) The term "joint labor-management committees" means committees voluntarily established to respond to actual or prospective worker dislocation, which ordinarily include (but are not limited to) the following—

(A) shared and equal participation by workers and management;

(B) shared financial participation between the company and the State, using funds provided under this title, in paying for the operating expenses of the committee;

(C) a chairperson, to oversee and guide the activities of the committee, (i) who shall be jointly selected by the labor and management members of the committee, (ii) who is not employed by or under contract with labor or management at the site, and (iii) who shall provide advice and leadership to the committee and prepare a report on its activities;

(D) the ability to respond flexibly to the needs of affected workers by devising and implementing a strategy for assessing the employment and training needs of each dislocated worker and for obtaining the services and assistance necessary to meet those needs;

(E) a formal agreement, terminable at will by the workers or the company management, and terminable for cause by the Governor; and

(F) local job identification activities by the chairman and members of the committee on behalf of the affected workers.

(6) the term "local elected official" means the chief elected executive officer of a unit of general local government in a substate area.

(7) The term "recipient" means any entity receiving funds under this title.

(8) The term "retraining services" means those services and activities specified in section 345.

(9) The term "service provider" means a public agency, private nonprofit organization, or private-for-profit entity that delivers educational, training, or employment services.

(10) The term "substate area" means that geographic area in a State established pursuant to section 315.

(11) The term "substate grantee" means that agency or organization selected to administer programs pursuant to section 316.

PART B—SERVICE DELIVERY SYSTEM AND BASIC PROGRAM REQUIREMENTS

WORKER READJUSTMENT AGREEMENTS

SEC. 311. (a) GENERAL RESPONSIBILITY OF GOVERNOR.—The Governor, as the grant recipient under this title, shall have responsibility for establishing systems and programs in accordance with the provisions of this title to assure that, to the maximum extent possible, eligible participants are provided with services which enable them to once again become productive members of the workforce.

(b) WORKER READJUSTMENT AGREEMENT REQUIRED FOR FUNDING.—No amounts appropriated for parts B, C, and D for any fiscal year may be allotted by the Secretary for programs established

under such parts, except pursuant to a Worker Readjustment Agreement.

(c) GENERAL ASSURANCE IN AGREEMENT.—The Worker Readjustment Agreement required by subsection (b) shall provide for an assurance by the Governor that all systems and programs established and operated with amounts appropriated under this title will be established pursuant to and operated in accordance with the provisions of this title.

(d) EXECUTION, MODIFICATION, AND TERMINATION OF AGREEMENT.—The Worker Readjustment Agreement shall be executed no later than four months proceding the program year for which funds are to be made available under this title. The Governor or the Secretary may at any time thereafter propose modifications to the Agreement, except that no modification of the Agreement shall be effective unless agreed to by both parties. The Agreement shall remain in effect until any mutually agreed upon termination date or until the Agreement is terminated by law or by the Secretary.

STATE WORKER READJUSTMENT COUNCILS

SEC. 312. (a) ESTABLISHMENT AND MEMBERSHIP OF COUNCILS.—(1) The Governor of each State shall establish a State worker readjustment council in accordance with the requirements of this section. The council shall be composed equally of representatives of (A) labor, (B) management, and (C) public and private nonprofit organizations, agencies, or instrumentalities.

(2) In selecting members for appointment to the council, the Governor shall—

(A) first, give consideration to individuals who are members of the State job training coordinating council and are otherwise qualified for appointment; and

(B) second, give consideration to individuals who are recommended by labor organizations, business, and other appropriate organizations, agencies, and instrumentalities, including units of general local government.

(3) The Governor shall give consideration to suitable representation from urban and rural areas of the State in selecting the members of the Council.

(b) RESPONSIBILITIES OF COUNCIL.—A State worker readjustment council established under subsection (a) shall be responsible for—

(1) providing advice to the Governor regarding (A) the designation of substate areas, and (B) the procedures to be established for selection of representatives within such areas under section 316(b);

(2) developing and submitting to the Governor the plan required by section 313;

(3) providing advice to the Governor regarding the method for distribution of funds received under part C, and any subsequent reallocations of such funds;

(4) providing advice to the Governor regarding general guidelines for making funds available for use in substate areas under part D;

(5) providing recommendations to the Governor with respect to acceptance of substate plans submitted to the Governor for approval under section 317; and

(6) providing advice to the Governor regarding performance standards.

STATE PLANS

SEC. 313. (a) ANNUAL PLAN REQUIRED; PERFORMANCE STANDARDS.—In order to obtain funds under this title for any fiscal year, the Governor of the State shall submit to the Secretary an annual plan for carrying out its responsibilities under this title. Such plan shall contain performance standards, which shall include incentives to provide training of greater duration for those who require it, consistent with section 106(g).

(b) ADDITIONAL ASSURANCES IN PLANS.—Such plan shall contain assurances that—

(1) services will be provided only to eligible dislocated workers, and that services in any substate area will not be denied solely on the basis of the residence of workers;

(2) allowable services, as determined to be necessary by the Governor, will be available in all substate areas;

(3) substate areas and substate grantees will be designated in accordance with sections 315 and 316;

(4) the State worker readjustment council will perform the functions required under section 312; and

(5) funds will be allocated and reallocated among substate areas for programs authorized in parts B and C in accordance with sections 332(d), 336, and 342(f).

(c) DESCRIPTION OF PROGRAM METHODS.—Such plan shall also contain a description of the methods which will be employed—

(1) to provide planning instructions, guidance, and other appropriate information in a timely manner, designed to provide for the effective and efficient management of resources and programs;

(2) to provide appropriate technical assistance;

(3) to provide monitoring, assessment, and evaluation of the program by such State;

(4) to provide the rapid response capability in accordance with section 314;

(5) to provide substate reporting requirements in accordance with section 323, and to review and analyze such reports;

(6) to provide advice to substate grantees on activities related to identifying and providing services to dislocated workers;

(7) to work with employers and labor organizations in promoting labor-management cooperation in achieving the goals of this title;

(8) to promote the coordination of programs authorized under this title with other appropriate and complementary State programs, including those providing economic development, education, training, and social services; and

(9) to the maximum extent practicable, to coordinate services provided under this title with other programs under this Act

and the Carl D. Perkins Vocational Education Act and with public employment service operations.

STATE SERVICES AND ACTIVITIES

SEC. 314. (a) RAPID RESPONSE AND RURAL RESPONSE CAPABILITIES.—Each State shall—

(1) designate an identifiable State disclocated worker unit or office, with the capability to respond rapidly, on-site, to mass dislocation events throughout the State in order to assess the need for, and initially provide, early readjustment assistance; and

(2) ensure the capability to respond to dislocation events in sparsely populated areas in accordance with subsection (c).

(b) STATE DISLOCATED WORKER UNIT REQUIREMENTS.—(1) The dislocated worker unit required by subsection (a)(1) shall include specialists who have the responsibility to—

(A) establish on-site contact with employer and employee representatives within a short period of time (preferably 48 hours or less) after becoming aware of a current of projected dislocation event in order to provide information and access to available public programs; and

(B) promote the formation of labor-management committees, including authority to—

(i) immediately assist in the establishment of the labor-management committee, including providing immediate financial assistance to cover the start-up costs of the committee;

(ii) provide a list of individuals from which the chairperson of the committee may be selected;

(iii) serve as resource persons providing the committee with technical advice as well as information on sources of assistance, and act as liaison to other public and private services and programs; and

(iv) facilitate the selection of worker representatives in the event no union is present;

(C) obtain information related to—

(i) economic dislocation (including potential closings or layoffs); and

(ii) all available resources within the State for displaced workers,

which information shall be made available on a regular basis to the Governor and the council to assist in providing an adequate information base for effective program management, review, and evaluation;

(D) provide or obtain appropriate financial and technical advice and liaison with economic development agencies and other organizations to assist in efforts to avert worker dislocations; and

(E) disseminate information throughout the State on the availability of services and activities carried out by the dislocated worker unit of office.

(2) Where, prior to the date of enactment of this Act, a local entity has a demonstrated capacity to provide the capability described in

this subsection, the Governor may delegate the responsibilities described in this subsection to such entity.

(c) STATE RURAL RESPONSE REQUIREMENTS.—Each State shall ensure the capability to respond to dislocation events where other forms of rapid response as provided in subsection (b) are otherwise inappropriate, especially in sparsely populated substate areas. Such capability shall supplement, and be coordinated with, ongoing basic readjustment and retraining efforts in such substate areas and with State services and activities as described in section 314. Such capability may include (but is not limited to)—

(1) development and delivery of widespread outreach mechanisms;

(2) provision of financial evaluation and counseling (where appropriate) to assist in determining eligibility for services and the type of services needed;

(3) initial assessment and referral for further basic adjustment and training services to be provided through the substate grantee; and

(4) assistance to substate grantees in the establishment of regional centers for the purpose of providing such outreach, assessment, and early readjustment assistance.

(d) STATE COORDINATION REQUIREMENTS.—Each State shall be responsible for coordinating the unemployment compensation system and worker readjustment programs within such State. Such coordination shall include—

(1) criteria for early identification of those having the most difficulty in finding employment;

(2) mechanisms for referring individuals to readjustment services early in the unemployment compensation benefit period;

(3) procedures to assure that, when eligibility for unemployment compensation is determined, beneficiaries are informed that the availability of or priority for further benefits (as described in section 344(c)(1)) will be based upon early enrollment for retraining services (as described in such section 344(c)(1)); and

(4) measures taken to ensure compliance with section 318, relating to the receipt of unemployment compensation while participating in programs under this title.

DESIGNATING OF SUBSTATE AREAS

SEC. 315. (a) DESIGNATION BY GOVERNOR.—The Governor of each State participating in programs established under parts C and D shall, after receiving any recommendations from the State worker readjustment council, designate substate areas for the State.

(b) INCLUSION OF WHOLE SERVICE DELIVERY AREAS.—Each service delivery area within a State shall be included within a substate area and no service delivery area shall be divided among two or more substate areas.

(c) FACTORS IN DESIGNATION OF AREAS.—In making designations of substate areas, the Governor shall consider—

(1) the availability of services throughout the State;

(2) the capability to coordinate the delivery of services with other human services and economic development programs; and

(3) the geographic boundaries of labor market areas within the State.

(d) REQUIRED DESIGNATIONS.—Subject to subsections (a), (b), and (c), the Governor—

(1) shall designate as a substate area any single service delivery area that has a population of 200,000 or more;

(2) shall designate as a substate area any two or more contiguous service delivery areas—

(A) that in the aggregate have a population of 200,000 or more;

(B) that request such designation; and

(3) shall designate any concentrated employment program grantee for a rural area described in section 101(a)(4)(A)(iii) of this Act.

(e) EXCEPTION TO REQUIRED DESIGNATION.—The Governor may deny a request for designation under subsection (d)(2) if the Governor determines that such designation would not be consistent with the effective delivery of services to eligible dislocated workers in various labor market areas (including urban and rural areas) within the State, or would not otherwise be appropriate to carry out the purposes of this title.

(f) REVISIONS OF DESIGNATIONS.—The designations made under this section may not be revised more than once each two years, in accordance with the requirements of this seciton.

SUBSTATE GRANTEES

SEC. 316. (a) DESIGNATION AND RESPONSIBILITY OF SUBSTATE GRANTEES.—A substate grantee shall be designated for each substate area. Such grantee shall be responsible for arranging for the provision, within such substate area, of activities specified in parts C and D pursuant to an agreement with the Governor and in accordance with the substate plan provided for in section 317. The substate grantee may provide such services directly or through contract, grant, or agreement with service providers.

(b) PROCEDURE FOR DESIGNATION.—A substate grantee shall be designated for each substate area in accordance with an agreement between the Governor, the local elected official of officials of such area, and the private industry council or councils of such area. Whenever a substate area is represented by more than one such official or council, the respective officials and councils shall each designate representatives, in accordance with procedures established by the Governor (after consultation with the State worker readjustment council), to negotiate such agreement. In the event agreement cannot be reached on the selection of a substate grantee, the Governor shall select the substate grantee.

(c) ENTITIES ELIGIBLE FOR DESIGNATION.—Entities eligible for designation as substate grantees include:

(1) private industry councils in the substate area;

(2) service delivery area grant recipients or administrative entities;

(3) private nonprofit organizations;

(4) units of general local government in the substate area, or agencies thereof;

(5) local offices of State agencies; and

(6) other public agencies, such as community colleges.

(d) ADMINISTRATIVE REQUIREMENTS APPLICABLE TO SUBSTATE GRANTEES.—The requirements of parts C and D of title I of this Act that apply to an administrative entity or a recipient of financial assistance under this Act shall also apply to substate grantees under this title.

SUBSTATE PLAN

SEC. 317. (a) APPROVAL BY GOVERNOR REQUIRED FOR FUNDING.—No amounts appropriated for any fiscal year may be provided to a substate grantee unless the Governor (after considering the recommendations of the State worker readjustment council) has approved a substate plan submitted by the substate grantee describing the manner in which activities will be conducted within the substate area to implement parts C and D. Prior to the submission to the Governor, the plan shall be submitted for review and comment to the other parties to the agreement described in section 316(b).

(b) CONTENTS OF PLAN.—The substate plan shall also contain a statement of—

(1) the means for delivering services to eligible participants;

(2) the means to be utilized to identify and select program participants;

(3) the means for implementing the requirements of section 314(d);

(4) the means for involving labor organizations where appropriate in the development and implementation of services;

(5) the performance goals to be achieved consistent with the performance goals contained in the State plan pursuant to section 313;

(6) the criteria to be applied in determining and verifying program eligibility;

(7) procedures, consistent with section 107, for selecting service providers which take into account past performance in job training or related activities, fiscal accountability, and ability to meet performance standards;

(8) a description of any rapid response capability carried out by the substate grantee;

(9) a description of the methods by which the other parties referred to in subsection (a) of this section will be involved in activities such as—

(A) providing policy guidance for and exercising oversight with respect to basic readjustment services and retraining services in the substate area in which they are located;

(B) commenting, as appropriate, on approved programs under part E operating with the substate areas in which they are located;

(C) working with employers and labor organizations in promoting labor-management cooperation in achieving the goals of this title; and

(D) participating in the implementation of early adjustment assistance systems for the substate area in which they are located, including providing support for rapid response

teams and assisting in the establishment of labor-management committees, as appropriate;

(10) a description of training services to be provided, including—

(A) procedures to assess participants' current education skill levels and occupational abilities;

(B) procedures to assess participants' needs, including educational, training, employment, and social services;

(11) the means whereby coordination with other appropriate programs and systems will be effected, particularly where such coordination is intended to provide access to the services of such other systems for program participants at no cost to the worker readjustment program; and

(12) a detailed budget, as required by the State.

APPROVED TRAINING

SEC. 318. Participation by any individual in any of the programs authorized in this title shall be deemed to be acceptance of training with the approval of the State within the meaning of any other provision of Federal law relating to unemployment benefits.

PART C—BASIC READJUSTMENT SERVICES

EXPENDITURES FOR BASIC PROGRAM

SEC. 331. Governors and substate grantees are authorized to expend amounts made available under this part to their respective States or substate areas in accordance with the provisions of this part, the substate plan, and other applicable provisions contained in this title.

ALLOTMENT OF FUNDS FOR BASIC SERVICES

SEC. 332. (a) ALLOTMENT AMONG STATES.—(1) Except as provided in paragraph (2), the Secretary shall allot amounts appropriated to carry out part B and this part for any fiscal year among the several States as follows:

(A) One-third of such amount shall be allotted among the States on the basis of the relative number of unemployed individuals who reside in each State as compared to the total number of unemployed individuals in all the States.

(B) One-third of such amount shall be allotted among the States on the basis of the relative excess number of unemployed individuals who reside in each State as compared to the total excess number of unemployed individuals in all States. For purposes of this paragraph, the term "excess number" means the number which represents unemployed individuals in excess of 4.5 percent of the civilian labor force in the State.

(C) One-third of such amount shall be allotted among the States on the basis of the relative number of individuals who have been unemployed for fifteen weeks or more and who reside in each State as compared to the total number of such individuals in all the States.

(2) As soon as satisfactory data are available under section 462(e) and, when available, under section 462(f) of this Act, the Secretary

shall allot amounts appropriated to carry out part B and this part for any fiscal year to each State so that—

(A) 25 percent of such amount shall be allotted on the basis of each of the factors described in subparagraphs (A), (B), and (C) of paragraph (1), respectively, for a total of 75 percent of the amount allotted; and

(B) 25 percent of such amount shall be allotted among the States on the basis of the relative number of dislocated workers in such State in the most recent period for which satisfactory data are available under section 462(e) and, when available, under section 462(f) of this Act.

(b) RETENTION FOR STATE-LEVEL ACTIVITIES.—The Governor may retain an amount not to exceed 10 percent of the amount allotted to the State under this part, for overall State level administration, staff for the State worker readjustment council, technical assistance, coordination of the programs authorized in this title, and the conduct of rapid response activities.

(c) RETENTION FOR DISCRETIONARY PROGRAMS.—The Governor may retain an additional amount not to exceed 10 percent of the amounts allotted to the State under this part, to be allotted at the discretion of the Governor for activities allowable under part B, C, or D (including services and activities carried out by the State dislocated worker unit).

(d) SUBSTATE AREA ALLOCATIONS.—The Governor shall allocate the remainder of the amount allotted to the State under this part to all substate areas for basic readjustment services authorized in this part, based on an allocation formula prescribed by the Governor. Such formula may be amended by the Governor not more than once each year. Such formula shall utilize the most appropriate information available to the Governor to distribute amounts to address the State's worker readjustment assistance needs. Such information may include (but is not limited to)—

(1) insured unemployment data;
(2) unemployment concentrations
(3) plant closing and mass layoff data;
(4) declining industries data;
(5) farmer-rancher economic hardship data; and
(6) long-term unemployment data.

ALLOWABLE BASIC READJUSTMENT SERVICES AND ACTIVITIES

SEC. 333. Basic readjustment services and activities authorized under this part may include (but are not limited to)—

(1) early readjustment assistance;
(2) outreach and intake;
(3) counseling (including financial counseling);
(4) testing;
(5) orientation;
(6) assessment, including evaluation of educational attainment and participant interests and aptitudes;
(7) determination of occupational skills;
(8) development of individual readjustment plans for participants in programs under this title;

(9) provision of future world-of-work and occupational information;
(10) job placement assistance;
(11) labor market information;
(12) job clubs;
(13) local job search;
(14) job development;
(15) self-directed job search; and
(16) retraining services as authorized under section 345.

SUPPORTIVE SERVICES AND BENEFITS

SEC. 334. (a) SERVICES NECESSARY TO FACILITATE PARTICIPATION.—Where it is determined by the substate grantee to be necessary to facilitate participation in the program authorized in this part, the substate grantee is authorized to provide appropriate supportive services to participants.

(b) TERMINATION OF SERVICES.—Availability of supportive services shall terminate no later than the 180th day after the participant has completed other services under this part.

(c) SUPPORT SERVICES FOR PARTICIPANTS IN BASIC READJUSTMENT ASSISTANCE.—Participants in basic readjustment assistance service activities under part C may be provided supportive services. Except as provided in subsection (d), such participants shall not be provided benefit payments under this title (but such participants may be provided unemployment compensation payments under any Federal or State program for which such participants are otherwise eligible).

(d) SERVICES AND BENEFITS FOR PART C PARTICIPANTS.—Supportive services and benefits authorized by section 344 may be provided in part C participants receiving retraining services pursuant to section 333(16).

COST LIMITATIONS

SEC. 335. (a) ADMINISTRATIVE COST LIMITATION.—No more than 15 percent of the amounts expended under this part in any program year by any substate grantee may be expended for administrative costs for the program authorized under this part.

(b) TERMINATION OF SERVICES.—No more than 15 percent of the amounts expended under this part in any program year by any substate grantee shall be expended by such substate grantee for the supportive services and benefits authorized under section 334.

(c) APPLICATION OF LIMITATIONS.—Minimum and maximum cost limitations shall be applicable to the accrued expenditures for each program year.

REALLOTMENT; REALLOCATION

SEC. 336. (a) REALLOTMENT BY SECRETARY OF UNUSED ALLOTMENTS.—If the amount of an allotment against which no accrued costs have been incurred by the end of any program year exceeds 20 percent of such allotment, the amount of the excess may be reallotted by the Secretary. The Secretary may, in reallotting funds, deduct an amount from the current year allotment equal to the amount of prior year funds subject to the reallottment.

(b) REALLOCATION BY GOVERNOR.—The Governor may reallocate part C basic grant funds among substate grantees within the State through voluntary transfers mutually agreed to by the Governor and the affected substate grantees, or whenever the Governor determines that minimum expenditure levels approved in substate plans will not be achieved prior to the end of each program year. The Governor shall establish and issue procedures for the reallocation of any funds prior to the reallocation of any funds under this subsection.

PART D—WORKER READJUSTMENT TRAINING PROGRAM

EXPENDITURES FOR WORKER READJUSTMENT TRAINING

SEC. 341. Governors and substate grantees are authorized to expend amounts made available by the Secretary under this part to their respective States or substate areas in accordance with the provisions of this part, the substate plan, and other applicable provisions contained in this title.

ALLOTMENT OF FUNDS

SEC. 342. (a) IN GENERAL.—The Secretary shall allot amounts appropriated to carry out this part in accordance with this section.

(b) ANNUAL AVAILABILITY TARGETS.—The Secretary shall for each program year establish an annual availability target for each State. Unless otherwise agreed upon by the Secretary and the Governor, the annual availability target for each State in each program year shall be in an amount equal to 1⅔ times the amount of the State's allotment under section 332(a).

(c) SEMIANNUAL AVAILABILITY TARGETS.—The Secretary shall also establish for each program year a semiannual availability target for each State at 50 percent of that State's annual availability target.

(d) REDUCTION OF TARGETS BASED ON ACTUAL EXPENDITURES.—At the end of each 6 months, the State's annual availability target shall be decreased by the Secretary in an amount equal to the difference between the State's reported semiannual expenditures and the State's semiannual availability target in effect for 6 months, unless otherwise provided for in accordance with subsection (e). No change shall be made in the State's subsequent semiannual availability targets for the current program year unless otherwise provided for in accordance with subsection (e).

(e) REQUEST FOR CHANGES IN TARGETS.—The Governor of any State may at any time request that the Secretary change that State's availability targets. Any such request shall be based on previous expenditure experience or demonstrated need, including recent economic developments. The Secretary is authorized to approve any such request, subject to the availability of funds therefor.

(f) TRANSFERS OF FUNDS TO PART C PROGRAMS.—The Secretary shall establish procedures whereby the Governor of any State desiring to expend amounts made available under this part of purposes of part C may request the approval of the Secretary to do so. If the Secretary approves any such request, the amount approved for the purposes of part C shall reduce the State's current availability targets, but shall not affect any allotments under section 332(a).

(G) PROCEDURES FOR DISTRIBUTING FUNDS ESTABLISHED BY GOVERNOR.—The Governor of each State (after considering the recommendations of the State worker readjustment council) shall establish appropriate procedures for making funds available for use in substate areas under this part.

COST LIMITATIONS

SEC. 343. (a) ADMINISTRATIVE COST LIMITATION.—No more than 15 percent of the amounts expended under this part in any program year by any substate grantee may be expended for administrative costs for the program authorized under this part.

(b) SUPPORTIVE SERVICES AND BENEFITS LIMITATION.—No more than 30 percent of the funds expended under this part in any program year by any substate grantee shall be expended by such substate grantee for the supportive services and benefits authorized under section 344.

(c) APPLICATION OF LIMITATIONS.—Minimum and maximum cost limitations shall be applicable to the accured expenditures for each program year.

SUPPORTIVE SERVICES AND BENEFITS

SEC. 344. (a) SERVICES NECESSARY TO FACILITATE PARTICIPATION.—Where it is determined by the substate grantee to be necessary to facilitate participation in the program authorized under this part, the substate grantee is authorized to provide appropriate supportive services to participants.

(b) TERMINATION OF SERVICES.—Availability of supportive services shall terminate no later than the 180th day after the participant has completed training or other services under this part.

(c) BENEFITS NECESSARY TO FACILITATE PARTICIPATION.—Whenever it is determined by the substate grantee to be necessary to facilitate an individual's participation in the program authorized in this part, the substate grantee is authorized to provide the following benefits from funds under this part to participants:

(1)(A) In accordance with procedures established by the State, any participant who enrolls for retraining services may be paid a weekly benefit (not to exceed the individual's average weekly amount of regular unemployment compensation payable under the State's unemployment compensation law) for any authorized period of retraining services subsequent to exhaustion of all compensation payable under any State or Federal unemployment compensation law.

(B) Procedures established by the State for purposes of subparagraph (A) shall provide that—

(i) in order to be eligible for such benefits, a participant who is unemployed as a result of any permanent closure of a plant, facility, or enterprise, or who has been terminated or permanently laid off from employment, shall be enrolled in retraining services no later than the end of the 10th week of the participant's regular unemployment compensation benefit period; and

(ii) in providing such benefits to workers who are otherwise on layoff, priority shall be accorded to those who

enroll for retraining services prior to the end of the 15th week of the participant's regular unemployment compensation benefit period.

(2) Needs-based payments may be provided to participants not receiving benefit payments under paragraph (1) (particularly those who are not eligible for unemployment compensation payments under any State or Federal unemployment compensation law), as determined by the substate grantee.

ALLOWABLE SERVICES AND ACTIVITIES

SEC. 345. (a) TRAINING SERVICES.—Each substate grantee is authorized to provide training services under this part to eligible participants. Such services may include, but are not limited to:

(1) classroom training;
(2) occupational skill training;
(3) on-the-job training;
(4) out-of-area job search;
(5) relocation;
(6) basic and remedial education;
(7) literacy and English for non-English speakers training;
(8) entrepreneurial training; and
(9) other appropriate training activities directly related to appropriate employment opportunities in the substate area.

(b) PUBLIC SERVICE EMPLOYMENT PROHIBITED.—No funds under this title shall be expended to provide public service employment or work experience.

(c) DURATION OF TRAINING.—Training programs for individuals may be supported for not more than 104 weeks using funds under this title.

(d) RETRAINING SERVICES.—Eligible readjustment training participants shall receive either retraining services, or a certificate of continuing eligibility.

(e) USE OF CERTIFICATES TO PERMIT INDIVIDUAL ARRANGEMENTS.—To the maximum extent feasible, training services shall be provided through systems of individual certificates that permit participants to seek out and arrange their own training. Training opportunities identified with approved service providers shall, pursuant to the certificate, be arranged through a grant, contract, or otherwise between the substate grantee and the service provider identified in the certificate.

(f) CERTIFICATES OF CONTINUING ELIGIBILITY.—The substate grantee is authorized to issue to any eligible individual who has applied for the program authorized in this part a certificate of continuing eligibility. Such a certificate of continuing eligibility may be issued for periods not to exceed one hundred and four weeks. No such certificate shall include any reference to any specific amount of funds. Any such certificate shall state that it is subject to the availability of funds at the time that any such training services are to be provided. Acceptance of such certificate shall not be deemed to be enrollment in training.

(g) DURATION AND USE OF ELIGIBILITY CERTIFICATES.—Any individual to whom a certificate of continuing eligibility has been issued under subsection (f) shall remain eligible for the program au-

thorized under this part for the period specified in the certificate, notwithstanding section 303(a), and may utilize the certificate in order to receive the retraining services, subject to the limitations contained in the certificate.

PART E—FEDERAL READJUSTMENT PROGRAMS

PROGRAM AUTHORIZED

SEC. 351. (a) IN GENERAL.—The Secretary is authorized to expend amounts appropriated for this part for activities authorized in this part, subject to any other applicable provisions contained in this title.

(b) GRANTS AND CONTRACTS PERMITTED.—In order to facilitate the conduct of the allowable activities under this part, the Secretary is authorized to make such grants and enter into such contracts or other agreements as the Secretary deems to be appropriate.

(c) CRITERIA FOR FUNDS.—The Secretary shall annually establish criteria for the application for and disbursement of amounts appropriated for this part.

ALLOWABLE ACTIVITIES

SEC. 352. (a) CIRCUMSTANCES WHERE FUNDS PERMITTED TO BE USED.—Amounts appropriated for this part may be used to provide services of the type described in parts C and D in the following circumstances—

(1) mass layoffs, including mass layoffs caused by natural disasters or Federal actions (such as relocations of Federal facilities) when the workers are not expected to return to their previous occupations;

(2) industrywide projects (treating agriculture as an industry);

(3) multistate projects;

(4) special projects carried out thorugh agreements with Indian tribal entities;

(5) special projects to address national or regional concerns described in subsection (e); and

(6) demonstration projects, including the projects described in subsections (f), (g), and (h).

(b) ADDITIONAL SERVICES PERMITTED.—Amounts appropriated for this part may also be used to provide services of the type described in parts C and D whenever the Secretary (with agreement of the Governor) determines that an emergency exists with respect to any particular distressed industry or any particularly distressed area to provide emergency financial assistance to dislocated workers. The Secretary may make arrangements for the immediate provision of such emergency financial assistance for these purposes with any necessary supportive documentation to be submitted at a date agreed to by the Governor and the Secretary.

(c) STAFF TRAINING AND TECHNICAL ASSISTANCE.—Amounts available for this part may be used to provide staff training and technical assistance services to States, communities, businesses and labor organizations, and other entities involved in providing adjustment assistance to workers. Applications for technical assistance funds shall be submitted in accordance with procedures issued by the Sec-

retary. Not more than 5 percent of the funds available for this part in any fiscal year shall be expended for the purpose of this subsection.

(d) TRAINING OF RAPID RESPONSE TEAMS.—Amounts available for this part shall be used to provide response staff, including specialists, providing rapid response services. Such training shall include instruction to proven methods of promoting, establishing, and assisting labor-management committees.

(e) SPECIAL PROJECTS.—The Secretary is authorized to undertake special projects of national or regional concern. The Secretary may—

(1) provide for such projects to extend over a period greater than one year in duration where circumstances warrant such a mulityear program; and

(2) conduct an evaluation of the effectiveness and impact of such projects upon their completion.

(f) TRAINING OF RAPID RESPONSE TEAMS.—

(1) IN GENERAL.—The Secretary may carry out demonstration programs in accordance with the provisions of this subsection. The Secretary is authorized to carry out the provisions of this subsection either directly or by way of contract or agreement. Whenever the Secretary directly conducts loan demonstration programs under this subsection, the Secretary shall, to the extent practicable, comply with the provisions of paragraph (3), relating to agreements.

(2) LOCATION OF PROGRAM.—The Secretary shall carry out the demonstration program under this subsection in communities in the country having the largest number of dislocated workers and shall give priority to communities with the highest concentrations of dislocated workers.

(3) MAXIMUM NUMBER OF AGREEMENTS.—The Secretary shall enter into agreements or conduct directly demonstration programs in not more than 10 communities described in this section.

(4) ELIGIBLE PROGRAM OPERATORS.—The Secretary may enter into an agreement with—

(A) State dislocated workers units, or

(B) State or local public agencies or nonprofit private organizations selected by the Secretary,

in order to carry out the demonstration program authorized by this subsection.

(5) CONTENTS OF AGREEMENTS.—Each agreement entered into under this subsection may provide—

(A) for the establishment and maintenance of a dislocated workers loan fund for the purpose of this subsection;

(B) for the deposit in such fund of the funds made available pursuant to this subsection;

(C) for the deposit in such fund in collections of principal and interest on direct loans made from deposited funds and any other earnings of such funds;

(D) that any obligation acquired by such fund may be sold at the market price; and the interest on, and the proceeds from the sale or redemption of, any obligations held in such fund, shall be credited to and form a part of such fund;

(E) that such direct loan funds shall be used only for—

(i) loans to dislocated workers in accordance with the provisions of this subsection; and

(ii) directly related administrative expenses;

(F) that the repayment of loans will be made in accordance with a repayment schedule that is consistent with paragraph (9); and

(G) for such other assurances and limitations, including the distribution of assets from the loan funds, established under this subsection at the completion or termination of the demonstration projects authorized by this subsection as the Secretary may reasonably prescribe.

(6) CONDITIONS, LIMITATIONS, AND REQUIREMENTS BY REGULATION.—(A) Loans from any workers loan fund established pursuant to an agreement established under this subsection shall be subject to such conditions, limitations, and requirements as the Secretary shall by regulation prescribe, and shall be made on such terms and conditions as the Secretary, in cooperation with the worker adjustment committee, rapid response team, or State agency, as the case may be, may prescribe.

(B) The aggregate amount of all direct loans made from funds established pursuant to an agreement under this subsection to each dislocated worker may not exceed $5,000.

(7) INTEREST RATES.—The interest rate on all loans made under this subsection shall be 2 percentage points below the long-term Treasury obligations.

(8) USE OF LOAN PROCEEDS.—(A) The loans made from loan funds established pursuant to such agreements may be used only for—

(i) vocational and on-the-job training;

(ii) basic education and literacy instruction;

(iii) relocation expenses; and

(iv) child care services.

(B) The Secretary shall, for the purpose of subparagraph (A)(i), establish criteria for accrediting vocational training programs, including a requirement that any vocational training program qualifying under subparagraph (A) have a demonstrated ability to place participants successfully in jobs.

(C) Not more than 25 percent of the aggregate amount of loans made to a single dislocated worker may be used for the activities described in clauses (iii) and (iv) of subparagraph (A) of this paragraph.

(9) TERMS OF LOANS.—Loans under this subsection shall be made pursuant to agreements which—

(A) require a repayment period which—

(i) begins not earlier than 6 months after the completion of training for which the funds were sought or when the income of the dislocated worker is equal to or greater than ⅔ of the income level of the dislocated worker for the three-month period preceding the determination of dislocation, whichever is later; and

(ii) is for a period not to exceed 10 years;

(B) provide for deferments of principal and for interest accrual during such deferments;

(C) provide such loan cancellation as is consistent with the purpose of this subsection; and

(D) require the recipient to cooperate with evaluation studies conducted pursuant to paragraph (11).

(10) ADDITIONAL TERMS BY SECRETARY.—The Secretary may prescribe such other terms for loans made pursuant to this subsection as the Secretary determines will carry out the provisions of this subsection.

(11) EDUCATION.—The Secretary shall, based upon the projects assisted under this subsection and independent research, conduct or provide for an evaluation of the feasibility of the direct loan approach to achieving the objectives of this subsection. The Secretary shall consider—

(A) the identity and characteristics of dislocated workers who take out direct loans;

(B) the purposes for which the loans are used;

(C) the employment obtained with the assistance provided under this subsection;

(D) the compensation paid to such workers;

(E) the repayments schedules; and

(F) the attitudes of the participants in the program.

(12) USE OF MULTIPLE EVALUATORS.—The evaluations required under paragraph (11) shall be conducted by at least 2 different public agencies or private nonprofit organizations.

(13) REPORT TO CONGRESS.—The Secretary shall prepare and submit to the Congress a report of the evaluations required by this subsection not later than October 1, 1989, together with such recommendations, including recommendations for legislation, as the Secretary deems appropriate.

(g) PUBLIC WORKS EMPLOYMENT DEMONSTRATION PROGRAM.—

(1) IN GENERAL.—The Secretary may carry out public works employment demonstration programs in accordance with the provisions of this subsection. The Secretary is authorized to enter into such contracts with private industry councils as may be necessary to carry out the provisions of this subsection.

(2) WAIVER AUTHORITY.—The Secretary may waive—

(A) the testing requirement in paragraph (4)(B) for physically handicapped individuals and for individuals requiring special education; and

(B) the requirement in section paragraph (5)(C) relating to a 32-hour workweek for unusual circumstances.

(3) LOCATION OF PROGRAM.—(A) The Secretary shall carry out the demonstration project under this subsection in cities and counties–

(i) which are geographically diverse;

(ii) which represent urban and rural areas; and

(iii) for which the unemployment rate, for the 6 months before the determination under this subsection, exceeded the national average rate of unemployment by at least 2 percent.

(B) The Secretary shall enter into agreements or conduct demonstration programs in not more than 10 cities or counties under this subsection.

(4) ELIGIBLE PARTICIPANTS.—(A) For the purpose of this subsection, an individual is eligible to participate in the demonstration project assisted under this subsection if the individual—

(i) is an eligible dislocated worker, as defined in section 303(a), who has been unemployed for at least 15 weeks before the determination of employment under this paragraph;

(ii) is an individual who has been unemployed or who has been without steady employment for a period of two years prior to such determination; or

(iii) is an individual who is a recipient under a State plan approved under part A of title IV of the Social Security Act, relating to aid to families with dependent children for a period of at least 2 years.

(B)(i) Each participant shall be tested for basic reading and writing competence by the private industry council prior to employment by a job project assisted under this subsection.

(ii)(I) Each participant who fails to complete satisfactorily the basic competency tests required by clause (i) of this subparagraph (1) of this subsection shall be furnished counseling and instruction.

(II) Each participant in a job project assisted under this subsection, shall, in order to continue such employment, have received a secondary school diploma or its equivalent, or maintain satisfactory progress toward such a diploma.

(III) Each participant with limited English speaking ability may be furnished such instruction as the private industry council deems appropriate.

(5) SELECTION OF PROJECTS.—(A) Each private industry council participating in the demonstration program authorized by this subsection shall select job projects to be assisted under this subsection pursuant to guidelines established by the Secretary. Each such job project selected for assistance shall provide employment to eligible participants.

(B) No project may be selected under this subsection if an objection to the project is filed by 2 representatives of the business community or by 2 representatives of labor organizations who are members of the private industry council. If there are not two members of a private industry council who are representatives of labor organizations then two representatives of labor organizations who are members of the State worker readjustment council may exercise the objection option authorized by this subsection for that private industry council.

(C) Each eligible participant employed in a job project assisted under this subsection may not be employed on such project for more than 32 hours per week.

(D) Not more than 10 percent of the total expenses of the demonstration project in each community may be used for transportation and equipment.

(E) The private industry council shall select project managers on a project-by-project basis. Each such manager shall be paid the local prevailing wage.

(6) WAGE RATES.—(A) Each eligible participant who is employed in a job project assisted under this subsection shall receive wages equal to the higher of—

(i) the minimum wage under section 6(a)(1) of the Fair Labor Standards Act of 1938; or

(ii) the amount which the eligible participant received in welfare benefits pursuant to the State plan approved under part A of title IV of the Social Security Act or in the form of unemployment compensation, if applicable, plus 10 percent of such amount.

(B) Each eligible participant who is employed in projects assisted under this Act shall be furnished benefits and employment conditions comparable to the benefits and conditions provided to other employees employed in similar occupations by the same employer but no such participant shall be eligible for unemployment compensation during or on the basis of employment in such a project.

(C) Each private industry council shall establish, for the area in which the demonstration is conducted, job clubs to assist eligible participants with the preparation of resumes, the development on interviewing techniques, and evaluation of individual job search activities.

(7) ADDITIONAL PROJECT SELECTION CRITERIA.—In selecting projects pursuant to criteria established by the Secretary, each private industry council shall—

(A) select projects, to the extent feasible, designed to develop skills which are marketable in the private sector in the community in which the project is conducted; and

(B) select projects which show potential for assisting eligible participants who are employed in the project to find jobs in the private sector.

(8) EVALUATION.—(A) The Secretary shall, either directly or by way of contract, evaluate the success of the employment demonstration program authorized by this subsection.

(B) The evaluations required by subparagraph (A) of this paragraph shall be conducted by at least 2 different public agencies or private nonprofit organizations.

(C) The Secretary shall prepare and submit to the Congress a report on the success of the employment demonstration program authorized by this subsection not later than October 1, 1989, together with such recommendations, including recommendations for legislation, as the Secretary deems appropriate.

(9) DEFINITIONS.—As used in this subsection—

(A) The term "participant" means an individual who is determined to be eligible under this subsection.

(B) The term "project" means an identifiable task or group of tasks which—

(i) will be carried out by a public agency, a private nonprofit organization, or a private contractor,

(ii) will meet the other requirements of this subsection,

(iii) will result in a specific product or accomplishment, and

(iv) would not otherwise be conducted with existing funds.

(h) AGRICULTURAL WORKERS DEMONSTRATION PROGRAM.—

(1) IN GENERAL.—The Secretary may, from the amount reserved pursuant to section 302(c)(3), carry out programs in accordance with the provisions of this subsection. The Secretary is authorized to enter into contracts or agreements with States to carry out the provisions of this subsection.

(2) SELECTION OF STATES FOR PROGRAM.—In carrying out the provisions of this subsection, the Secretary shall give priority to States most affected by adverse agricultural conditions as reflected by—

(A) the decline in farm equity as measured by the percent change in farm equity between 1981 and the most recent year for which data is officially published by the United States Department of Agriculture, Economic Research Service; and

(B) the percent change in the average debt to asset ratio of farms within a State between 1981 and the most recent year for which data is officially published by the United States Department of Agriculture, Economic Research Service.

(3) DURATION OF PROGRAMS.—The Secretary may enter into agreements with priority States for demonstrations of two or more years in duration, described in this subsection.

(4) PLAN REQUIRED; CONTENTS.—To be eligible for this subsection, a State must submit a plan to the Secretary describing how the State will utilize funds to meet the unique basic readjustment needs of eligible farmers, ranchers, farm workers, and other individuals eligible under this subsection. The plan shall include—

(A) designation of the agency or agencies of State government which will implement the plan and the service delivery system which will be employed;

(B) a description of the basic readjustment services to be provided;

(C) a description of the classes of eligible recipients who will be served and an estimate of the numbers of such individuals expected to be served;

(D) an explanation of how the service delivery system developed under this subsection will be coordinated with the service delivery system established under other titles or statutes to assist dislocated workers and with other programs that assist this target population; and

(E) other information or assurances that the Secretary may require.

(5) ELIGIBLE INDIVIDUALS.—Individuals eligible to receive services under the State plan may include:

(A) Individuals who can certify or demonstrate that the farm or ranch operations which provide their primary occupation have terminated or will terminate because of circumstances which may include one or more of the following events—

(i) receipt of notice of foreclosure of intent to foreclose;

(ii) failure of the farm to return a profit during the preceding 12 months;

(iii) entry of the farmer into bankruptcy proceedings;

(iv) failure or inability of the farmer to obtain operating capital necessary to continue operations;

(v) failure or inability to make payments on loans secured by mortgages on agricultural real estate; or

(vi) farmer's total debts exceed 70 percent of total assets.

(B) Individuals who may reasonably be expected to leave farming or ranching as their primary occupation because of unfavorable debt to asset ratio as defined by the Department of Agriculture.

(C) Individuals displaced from agriculture-related businesses and industries, including farm workers, who have been displaced or adversely affected by the declining agricultural economy.

(D) Individuals and their immediate families who are attempting to continue farming or ranching, but whose ability to do so is threatened because of one or more factors listed in paragraph (5)(A).

(6) AUTHORIZED ACTIVITIES AND SERVICES.—Activities and services which may be provided under an approved plan may include the following—

(A) assistance in the evaluation of financial condition and in the preparation of financial plans;

(B) assistance in managing temporary crises, including pyschological and mental health counseling;

(C) vocational evaluation, including basic skills and literacy evaluation, counseling, and remediation;

(D) credit and legal counseling, including farmer/lender mediation services;

(E) job search assistance, including training in job seeking skills;

(F) entrepreneurial training;

(G) specific skill training, including on-the-job training and customized training in cooperation with potential employers; and

(H) support services required to enable eligible individuals to participate in programs, including transportation, health care, dependent care, meals, temporary shelter, and other reasonable subsistence allowances; tuition, fees, books, and expenses associated with training, and up to one-half of wages paid to an eligible individual during on the job training.

(7) SUPPLEMENTATION OF SERVICES AND ACTIVITIES.—Services provided under this subsection shall supplement services and activities provided under other titles and statutes established to assist dislocated workers and under other programs assisting this target population.

(8) ONE-STOP SERVICES.—To the fullest extent feasible, States participating in this demonstration are encouraged to provide a

comprehensive set of services to eligible individuals at a single site.

PROPOSALS FOR FINANCIAL ASSISTANCE

SEC. 353. (a) ADDITIONAL SERVICES UNDER PROPOSALS.—In addition to any financial assistance provided under section 352, the Secretary is authorized to provide services of the type described in parts C and D under proposals for financial assistance. Proposals for financial assistance under this part shall be submitted to the Secretary, who shall consult in a timely fashion with the Governor of the State in which the project described in the proposal is to operate.

(b) MULTISTATE PROPOSALS.—With respect to multistate projects (other than projects established under section 352), the proposal shall be submitted by the Governor of one State and shall include the concurrence of the Governor or Governors of each of the other States in which the project is to operate.

(c) REVIEW OF PROPOSALS BY PRIVATE INDUSTRY COUNCILS.—Any proposal for financial assistance under this part shall contain evidence of review, or timely availability for review, by the local private industry council or councils when the project is to operate within one or more service delivery areas served by such council or councils. Multistate proposals, industry-wide proposals, projects with Indian tribal entities, and funds allotted by the Secretary under section 352(b) shall not be subject to this requirement.

(d) CONSULTATION WITH LABOR ORGANIZATIONS.—Any proposal under this section which is intended to provide services to a substantial number of members of a labor organization shall be submitted only after consultation, or timely availability for consultation, with such labor organization. Any such proposal shall contain evidence of such consultation or availability.

TITLE IV—FEDERALLY ADMINISTERED PROGRAMS

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PART E—LABOR MARKET INFORMATION

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COOPERATIVE LABOR MARKET INFORMATION PROGRAM

SEC. 462. * * *

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(f)(1) The Secretary shall develop, in coordination with the Secretary of Agriculture, statistical data relating to permanent dislocation of farmers and ranchers due to farm and ranch failures. Among the data to be included are—

(A) the number of such farm and ranch failures;

(B) the number of farmers and ranchers displaced;

(C) the location of the affected farms and ranches;

(D) the types of farms and ranches involved; and

(E) the identification of farm family members, including spouses, and farm workers working the equivalent of a full-time job on the farm who are dislocated by such farm and ranch failures.

(2) The Secretary shall publish a report based upon such data as soon as practicable after the end of each calendar year. Such report shall include a comparison of data contained therein with data currently used by the Bureau of Labor Statistics in determining the Nation's annual employment and unemployment rates and an analysis of whether farmers and ranchers are being adequately counted in such employment statistics. Such report shall also include an analysis of alternative methods for reducing the adverse effects of displacements of farmers and ranchers, not only on the individual farmer or rancher, but on the surrounding community.

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TITLE V—MISCELLANEOUS PROVISIONS

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STATE JOB BANK SYSTEMS

SEC. 505. (a)(1) The Secretary shall carry out the purposes of this section with sums appropriated pursuant to paragraph (2) for any fiscal year.

(2) There are authorized to be appropriated to carry out this section $50,000,000 for fiscal year 1988 and such sums as may be necessary for each succeeding fiscal year.

(b) The Secretary shall make such sums available through the United States Employment Service for the development and implementation of job bank systems in each State. Such systems shall be designed to use computerized electronic data processing and telecommunications systems for such purposes as—

(1) identifying job openings and referring jobseekers to job openings, with continual updating of such information;

(2) providing information on occupational supply and demand; and

(3) utilization of such systems by career information delivery systems (including career counseling programs in schools).

(c) Wherever possible, computerized data systems developed with assistance under this section shall be capable of utilizing software compatible with other systems (including management information systems and unemployment insurance and other income maintenance programs) used in the administration of employment and training programs. In developing such systems, special consideration shall be given to the advice and recommendations of the State occupational information coordinating committees (established under section 422(b) of the Carl D. Perkins Vocational Education Act), and other users of such systems for the various purposes described in subsection (b) of this section.

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